[Mammadov and Others v. Azerbaijan (no. 35432/07)](http://www.prisonlitigation.org/?email_id=99&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9mcmU%2FaT0wMDEtMTg5OTYw&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank)

The first applicant died in detention. His wife and son argue in particular that the authorities are responsible for his death as he had been subjected to ill-treatment and deprived of adequate medical care while in detention, and that his detention was continued in spite of his medical condition.

Complaint under Article 3

As regards the ill-treatment to which the applicant had been subjected, the Court observed “that the statements of the first applicant are supported by his lawyer and family” (§114). In addition, whereas “the first applicant’s lawyer immediately complained of the first applicant’s alleged ill-treatment in his appeal lodged on 5 February 2007 […] the investigator in charge of the case ordered the first applicant’s forensic examination only on 7 April 2007, which was carried out on 12 April 2007” (§115). The Government did not give any reason for this delay.

As a result “having regard to the fact that there was witness evidence about injuries (even if it came from the first applicant’s lawyer and family members), that the first applicant was detained by the authorities in an undisclosed location at the time when the alleged acts of ill-treatment took place, that the events complained of lied wholly within the exclusive knowledge of the authorities, and that the first applicant’s version of events [had] been consistent and plausible as far as essential elements are concerned and that the Government [had] failed to submit sufficient information or evidence calling into question the first applicant’s version of events” (§116) the Court accepted the first applicant’s account of events and concluded that there had been a violation of Article 3.

In addition, the Court found a violation of Article 3 under its procedural limb as the Government failed to conduct a proper investigation into the first applicant’s allegations of ill-treatment. Not only that the forensic examination was carried out two months after the events reported, the domestic courts in charge of the case “merely dismissed his allegation of ill-treatment as unsubstantiated without conducting an effective judicial investigation… [and] failed to hear evidence from the first applicant, the alleged perpetrators of the ill‑treatment, or any other possible witness” (§127).

Complaint under Article 2

The first applicant “died from an ischemic cerebral infarction in detention under the authorities’ control” (§137). As early as March 2009, the medical department of the prison in which the applicant was held “confirmed the necessity of [his] transfer to a specialised medical establishment” (§138). However, the transfer only took place in July 2009. In this regard, the Court observed that the first applicant “refused to be transferred to the medical facility at least on two occasions between 6 March and 28 July 2009” (§140). As a result, “the Court considers that the delay in the first applicant’s transfer to the medical facility is not attributable to the domestic authorities” (§141) and concluded that there had been no violation of Article 2 under its substantive limb.

As regards the investigation into the circumstances of the first applicant’s death, the Court observed that even though a “criminal inquiry was launched by the prosecuting authorities immediately after the first applicant’s death” (§147), this investigation did not concern the consequences of the late transfer of the first applicant nor circumstances surrounding his refusals to be transferred between March and July 2009. In addition “prosecuting authorities failed to inform the second and third applicants of the progress of the investigation and to involve them in the investigation” (§150). Therefore, the Court concluded that there had been a violation of Article 2 under its procedural limb.