



Arrest and pre-trial detention of a well-known journalist led to violations of the Convention

In today's **Chamber judgment**¹ in the case of **Mirgadirov v. Azerbaijan and Turkey** (application no. 62775/14) the European Court of Human Rights held, unanimously, that there had been:

by Azerbaijan:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights over the absence of a reasonable suspicion of a criminal offence;

a violation of Article 5 § 1 of the European Convention over the applicant's detention from 19 to 20 November 2014 in the absence of a court order;

a violation of Article 5 § 4 (judicial review of the lawfulness of detention) on account of the domestic courts' failure to assess the applicant's arguments in favour of his release;

a violation of Article 6 § 2 (presumption of innocence);

a violation of Article 8 (right to respect for private and family life), and,

no violation of Article 18 (limitation on use of restrictions of rights) in conjunction with Article 5.

In respect of Turkey:

No need to examine the complaint under Article 5 § 4; rest of complaints inadmissible.

The case concerned the arrest and pre-trial detention of the applicant, a well-known journalist, on charges of high treason as he had allegedly spied for Armenia.

The Court found in particular that the evidence, whether submitted to it or presented domestically, had not been sufficient to find a reasonable suspicion that the applicant had committed high treason. Restrictions placed on him during his pre-trial detention had also violated his rights.

Principal facts

The applicant, Rauf Habibula oglu Mirgadirov, is an Azerbaijani national born in 1961. He currently lives in Thalwil, Switzerland.

While the applicant, a well-known journalist, was working as a correspondent for an Azerbaijani newspaper in Turkey, the Turkish authorities in April 2014 withdrew his press accreditation and residence permit and eventually deported him to his home country.

On arrival in Baku airport he was placed under arrest by agents of the Azerbaijani Ministry of National Security ("the MNS"). Two days later he was charged with high treason for allegedly providing secret information to Armenian agents.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

He was held in detention pending trial from April 2014 until his conviction in December 2015 by the Baku Court of Serious Crimes, which sentenced him to six years' imprisonment. In March 2016 the Baku Court of Appeal suspended the sentence for five years and he was released the same day.

While in pre-trial detention various restrictions were placed on the applicant, including the right to use the telephone, and to meet or correspond with anyone other than his lawyers. The domestic courts rejected his appeals against his pre-trial detention and the restrictions.

In July 2014 the MNS and the Prosecutor General's Office issued a statement which stated, among other things, that the applicant had supplied various pieces of information relating to Azerbaijan's security to a former Minister of National Security of Armenia.

Complaints, procedure and composition of the Court

The applicant made several complaints under Article 5 (right to liberty and security). He also alleged breaches of Article 6 § 2 (presumption of innocence), Article 8 (right to respect for private and family life), Article 10 (freedom of expression), and Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5. The applicant in addition complained against Turkey under Article 5 §§ 1, 2, 3 and 4 of the Convention and Article 10.

The application was lodged with the European Court of Human Rights on 11 September 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra O'Leary (Ireland), *President*,
Gabriele Kucsko-Stadlmayer (Austria),
Ganna Yudkivska (Ukraine),
Latif Hüseyinov (Azerbaijan),
Saadet Yüksel (Turkey),
Anja Seibert-Fohr (Germany),
Mattias Guyomar (France),

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

Complaints against Azerbaijan

Article 5 §§ 1 and 3

The Court noted that the applicant had been charged with high treason after meeting L.B., who according to the authorities was an agent of the Armenian intelligence services, and other people on various dates in 2008 and 2009. Those meetings had taken place within the framework of international conferences in which the applicant had participated as a political analyst and journalist.

The Azerbaijani Government had submitted that he had been detained on a reasonable suspicion of having committed a criminal offence, as corroborated by information and evidence, including video-recordings of his meetings with representatives of foreign intelligence services and his receipt of money from them. The Government had also referred to procedural decisions which had shown that the prosecuting authorities had relevant information and had submitted it to the courts.

However, the Court noted that the applicant had not been charged with high treason because of his meetings with L.B. and others, but because of his alleged espionage in providing foreign intelligence services with information collected at their request, along with photographs and technical drawings.

The Azerbaijani Government had also referred in a general way to information and evidence which allegedly corroborated the existence of a reasonable suspicion against the applicant of high treason, without specifying the content of that information and evidence. The only particular pieces of evidence to which the Government had expressly referred were the video-recordings and the alleged receipt of money. However, it did not appear from the first court decision on the applicant's detention in April 2014 or any subsequent decision on that question that any video-recording had been submitted to the courts as their decisions had not referred to that kind of material.

In addition, the Government had not demonstrated that the requirements set down in a decision of the Plenum of the Supreme Court of 3 November 2009 for courts to subject prosecuting authorities' applications for remand decisions to close scrutiny had been taken into account.

Furthermore, none of the court decisions extending the applicant's pre-trial detention had referred to the alleged new fact of Internet correspondence between the applicant and L.B. as confirmation of a reasonable suspicion of high treason. The Azerbaijani Government had also failed, even in the proceedings before the Court, to present any material that would satisfy an objective observer that the applicant might have committed a criminal offence.

The Court concluded that the material put before it had not met the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest and continued detention and there had been a violation of that provision. Given that finding, it did not consider it necessary to examine separately the complaint under Article 5 § 3.

It was also clear from the case file that the applicant had been detained for 16 hours, from midnight on 19 November to 4 p.m. on 20 November 2014, without any judicial order authorising his detention. The detention had thus been unlawful and had violated Article 5 § 1.

Article 5 § 4

The applicant submitted that the domestic courts had failed to respond to any of the relevant arguments against detention that he had repeatedly raised. His lawyers had also not been informed of a district court hearing on 20 November 2014. The Government rejected those allegations.

The Court noted that the courts had used short, vague and stereotyped formulae for rejecting the applicant's complaints about his pre-trial detention, limiting their role to the automatic endorsement of the prosecution's applications. They had not therefore conducted a genuine review of the "lawfulness" of his detention and there had been a violation of Article 5 § 4. It did not consider it necessary to examine separately the complaint about the November 2014 hearing.

Article 6 § 2

The Court held that the statement released in July 2014 by the MNS and the prosecutor's office had not been made with the necessary discretion and circumspection and that the overall way it had been formulated had left the reader in no doubt that the applicant had committed the criminal offence of high treason. There had thus been a violation of Article 6 § 2 of the Convention.

Article 8

The applicant relied on Article 8 and Article 10 in his complaint about the restrictions placed on him in pre-trial detention, but the Court dealt with the issues raised only under Article 8.

It first found that the interference with the applicant's right to receive and subscribe to socio-political newspapers or magazines was not in accordance with the law within the meaning of paragraph 2 of Article 8.

The measures had also amounted *de facto* to an outright ban on him having any contact (meetings, telephone calls or correspondence) with the outside world, except for with his lawyers. Neither the investigator who had asked for the restrictions nor the courts had put forward any relevant

justification to support such harsh and all-encompassing measures. The Government had also failed to submit any relevant explanation for why it had been necessary to separate the applicant from his family and the outside world.

The Court concluded that the reasons given by the domestic authorities in support of the restriction of the applicant's rights were not relevant and sufficient and there had been a violation of Article 8.

Article 18 in conjunction with Article 5

The applicant submitted that the restrictions imposed on him had been linked to his work as a journalist and political analyst. The Azerbaijani Government submitted that the restrictions had not been applied for any purpose other than one envisaged by Article 5.

The Court observed that the applicant had complained briefly and in a general way that the restrictions in question had been applied by the Azerbaijani Government with the intention of isolating him, as a journalist and political analyst, from his professional activity. However, he had failed to specify what in his work could have been behind the restrictions placed on him.

Having regard to the applicant's submissions and all the material in its possession, the Court could not find beyond reasonable doubt that his arrest and detention had pursued any ulterior purpose. There had accordingly been no violation of Article 18 taken in conjunction with Article 5.

Complaints against Turkey

Article 5 and Article 10

The Court found that the applicant's complaints under Article 5 §§ 1, 2, 3 and 4 were either inadmissible (under Article 5 § 3), that an examination was not required (Article 5 § 4), or that he had not exhausted domestic remedies (complaints under Article 5 §§ 1 and 2 and Article 10).

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.