



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 35584/02  
by Rasul GULIYEV  
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 27 May 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 24 September 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Rasul Guliyev, is an Azerbaijani national, who was born in 1947 and lives in New York, USA. He was represented before the Court by Mr O. Kazimov and Mr H. Sadaddinov, lawyers practising in Baku.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicant, may be summarised as follows.

*(a) Criminal proceedings against the applicant.*

From 1990 to 1993 the applicant held a number of the highest managerial posts in the country's oil sector, including the “Azerneftyağ” Production Union and the State Oil Company of Azerbaijan. For a few months in 1993 he worked as a First Deputy Prime Minister and, later, from 1993 to 1996 he was the Speaker of the Milli Mejlis (the Parliament). In 1996 he resigned from his office, allegedly in protest of the Government's policies, and left the country. While abroad, he founded and led the Democratic Party of Azerbaijan (the “DPA”) with its headquarters in Baku. He currently resides in the United States.

As a result of the criminal investigation commenced in 1996, in 1998 the Prosecutor General indicted the applicant for misappropriation of public funds, abuse of power and fraud during his work in the oil companies and in the government. The Prosecutor General sought the applicant's arrest and trial. On 10 October 2000 the Sabail District Court, based on the Prosecutor General's bill of indictment, issued an order for the applicant's detention on remand pending trial. On 17 October 2000 the Court of Appeal upheld the district court's order. However, the applicant was not actually arrested, because he had never returned to Azerbaijan since his departure in 1996.

Believing that if he returned home he would be immediately arrested, the applicant lodged, through his lawyer, a petition with the Sabail District Court, asking for the substitution of the detention on remand by a house arrest pending trial. Under this condition, he would agree to return home and stand trial.

On 5 July 2002 the Sabail District Court dismissed the applicant's petition. It held that the detention on remand was the proper pre-trial measure, because of the gravity of the alleged crimes, the applicant's continued “escape from the investigation,” as well as the reasonable grounds to believe that the applicant would influence other parties to the proceedings in order to hinder the pre-trial investigation and the trial.

The applicant appealed against this decision to the Court of Appeal. On 23 July 2002 the Court of Appeal refused to consider the appeal in substance. In accordance with its interpretation of the domestic criminal procedure law, the court held that no appeal could lie against a first instance court's decision concerning a petition on replacement of a pre-trial detention by a house arrest.

At present, the applicant resides in the United States as a political refugee. The criminal proceedings against him are still pending and the order on his detention on remand is still in force. It follows that the applicant would be arrested and detained upon his return to Azerbaijan.

*(b) Rejection of the applicant's candidacy for the presidential elections.*

In the summer of 2003 the DPA nominated the applicant as a candidate for the presidential elections of 15 October 2003. However, on 2 July 2003 the Central Election Commission (the “Commission”) rejected the applicant's nomination based on Article 100 of the Constitution and Article 54 § 8 of the Election Code.

The DPA filed a lawsuit in the Court of Appeal, requesting the court to quash the Commission's decision as unlawful. On 7 July 2003 the Court of Appeal rejected this request, holding that the Commission's decision was lawful for two reasons. Firstly, it found that the registration documents submitted to the Commission were not properly certified and legalised and, thus, were not in conformity with the Election Code's requirements. Secondly, the applicant failed to submit evidence of the fact that he had no obligation before any foreign state (in his case, the United States). Upon the DPA's further appeal, on 14 July 2003 the Supreme Court upheld the Court of Appeal's decision.

## **B. Relevant domestic law**

### *Constitution of the Republic of Azerbaijan of 1995*

#### **Section II. Fundamentals of the State.**

According to Article 7, the state power in the Republic of Azerbaijan shall be based on the principle of separation of powers. The legislative, executive and judicial branches of the government shall be independent within the framework of their respective authority.

#### **Section V. Legislative Power.**

In accordance with Article 81, the legislative power shall be exercised by the Milli Mejlis (the Parliament) of the Republic of Azerbaijan.

Article 93 authorizes the Milli Mejlis to pass laws, constitutional laws and resolutions on the matters within its competence.

Pursuant to Article 94, the Milli Mejlis has competence to establish rules, by way of passing laws, with regard to all the major spheres of state regulation including, *inter alia*, the human rights and freedoms, elections, judicial system, status of natural and legal persons, civil law issues, criminal responsibility, litigation procedure, enforcement of judgments, family law issues, labour and social security, finance and banking, taxation and customs, communications and transport, commercial transactions, defence and military service, ratification and denunciation of treaties, and the like.

#### **Section VI. Executive Power.**

In accordance with Article 99, the executive power shall be exercised by the President of the Republic of Azerbaijan.

Under Article 109, the President is empowered, *inter alia*, to sign and publish laws passed by the Milli Mejlis as well as deal with matters not expressly referred to the authority of the Milli Mejlis by the Constitution.

Article 110 provides the President with a right to veto the laws passed by the Milli Mejlis. The Milli Mejlis may overturn the presidential veto by a qualified majority of votes.

In accordance with Article 113, the President shall issue decrees and orders with regard to matters within his competence.

### **Section X. Legislative System.**

In accordance with Article 149, the laws (legislative acts) of the Milli Mejlis shall have the superior legal authority over any other normative legal acts, except the Constitution and acts adopted by public referendum. The presidential decrees and orders shall not contradict the laws passed by the Milli Mejlis.

## **COMPLAINTS**

1. The applicant complained under Article 5 § 1 of the Convention that the order on his detention on remand was unlawful. Specifically, he complained that the circumstances of the case did not require an imposition of the detention on remand as a preventive measure against him, because there was no well-grounded suspicion that he had committed any crime. He submitted that the accusations against him had been false and fabricated.

2. The applicant also complained under Article 6 § 1 of the Convention of the outcome of the proceedings concerning his detention on remand. He alleged that the domestic courts had not been fair and impartial when refusing to replace the pre-trial detention with a house arrest. He also complained that the Court of Appeal unlawfully refused to review his appeal from the Sabail District Court's decision rejecting his replacement request.

3. Again relying on Article 6 § 1 of the Convention, the applicant complained about the unfairness of the proceedings concerning the Central Election Commission's refusal to register him as a candidate in presidential elections. He alleged that the courts had erred in assessing the facts and misinterpreted the domestic law.

4. Invoking Article 13 of the Convention in conjunction with Article 6 of the Convention, the applicant complained that the domestic remedies in his case had been ineffective.

5. The applicant further complained under Article 3 of Protocol No. 1 to the Convention that his right to stand as a candidate in the presidential elections had been unlawfully restricted by the authorities.

6. Under Article 3 § 2 of Protocol No. 4 to the Convention, the applicant complained that, by threatening to arrest him upon his return to Azerbaijan, the authorities had actually prevented him from returning home and resuming normal political activity.

7. Under Article 2 of Protocol No. 7 to the Convention, the applicant complained of the Court of Appeal's allegedly wrongful interpretation of the domestic criminal procedure law and its refusal to review in substance his complaint against the Sabail District Court's decision rejecting the replacement of the pre-trial detention by a house arrest.

8. Finally, relying on Article 14 of the Convention in conjunction with the above-mentioned Articles of the Convention and Protocols, the applicant complained that his Convention rights had been infringed as a result of the

discrimination based on his political opinion, because he was one of the major political opponents of the current Government.

## THE LAW

1. The applicant complains under Article 5 § 1 of the Convention that the order concerning his detention on remand was unlawful. Article 5 § 1 reads, in the relevant part:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...”

The Court recalls that, in proclaiming the “right to liberty,” Article 5 § 1 is contemplating the physical liberty of a person and that its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion (see *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, § 92). The Court observes that, in the instant case, despite the existence of the court order on the applicant's detention, he has not been physically detained and currently resides in the United States. Accordingly, whereas the applicant has not yet been dispossessed of his “physical liberty,” his complaint of the unlawfulness of the detention under Article 5 of the Convention is premature.

It follows from the above finding that it is not necessary for the Court to consider whether this unimplemented detention order, as such, was “lawful” within the meaning of Article 5 § 1(c) of the Convention.

The Court finds that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

2. The applicant complains under Article 6 of the Convention of the unfairness and lack of impartiality of the domestic courts which ordered his detention on remand and did not allow his house arrest. Having regard to the substance of the complaint, the Court considers that, in addition to the analysis under Article 6, it should also be analysed from the standpoint of Article 5 § 4 of the Convention.

(a) Insofar as the applicant invokes Article 6 of the Convention, that Article provides as follows:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

The Court recalls that, under Article 34 of the Convention, the Court may examine complaints only from persons claiming to be victims of a violation of one of the Convention provisions.

The Court further recalls that, as far as criminal matters are concerned, the primary purpose of Article 6 is to ensure that the applicant is given, as a whole, a fair trial by a “tribunal” competent to determine “any criminal charge” (see *Nikolova v. Bulgaria* (dec.), no. 31195/96, 27 February 1997). Accordingly, a person claiming unfairness of proceedings relating only to his detention cannot, in principle, claim to be a victim of a violation of Article 6 when the criminal proceedings against him are still pending and when no final conviction has yet been pronounced in the relevant proceedings (see e.g. *Kawka v. Poland* (dec.), no. 25874/94, 17 May 1995; *Ilijkov v. Bulgaria* (dec.), no. 33977/96, 20 October 1997).

In the present case, the applicant's complaint concerns an early stage of the criminal proceedings, namely the court orders concerning his detention on remand, and not a “trial” before a “tribunal” within the meaning of Article 6 of the Convention. The courts that ordered and upheld the applicant's detention were not called upon to determine any “criminal charge” against the applicant. On the contrary, at present, the criminal proceedings against the applicant are still pending. There has been no trial and no conviction. The Court cannot, at this stage, speculate whether the applicant will in fact be detained upon his return to Azerbaijan, whether he will be put on trial, whether the trial will be fair as a whole, or whether the applicant will be convicted (*cf. Nikolova v. Bulgaria*, cited above). Therefore, the Court finds that, from the standpoint of Article 6 of the Convention, this complaint is premature, because the applicant cannot, at this stage of the criminal proceedings, claim to be a victim of the alleged violation of Article 6.

(b) In addition, insofar as the applicant complains of the unfairness of the proceedings concerning his detention on remand, the Court considers that the applicant's allegations could qualify as a substantive complaint under Article 5 § 4 of the Convention, although the applicant does not explicitly invoke that Article. Article 5 § 4 provides as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

The Court recalls that, in principle, proceedings conducted under Article 5 § 4 of the Convention should meet, to the largest extent possible under the circumstances of an ongoing investigation, the basic requirements of a fair trial (*Shishkov v. Bulgaria*, no. 38822/97, § 77, 9 January 2003). The Court observes, however, that Article 5 § 4 guarantees such fair trial requirements only to persons “deprived of [their] liberty by arrest or detention.” As it has been noted above, despite the existence of an order on the applicant's detention, the applicant has not yet been deprived of his physical liberty. In such circumstances, the Court reiterates that the applicant's complaint is premature and that, at this stage, it is not necessary for the Court to examine

whether the proceedings concerning the applicant's detention on remand satisfied the safeguards of Article 5 § 4 of the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

3. The applicant complains, again under Article 6 of the Convention, that he did not receive a fair trial in the proceedings concerning the Central Election Commission's refusal to register him as a candidate in the presidential elections. Article 6 provides, in the relevant part:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] tribunal ...”

The Court notes that the litigant in the proceedings in question was the Democratic Party of Azerbaijan. The applicant was not, as such, a party to the proceedings and, therefore, the question arises whether the applicant may claim to be a victim of the alleged violation of the Convention as required by Article 34 of the Convention. In the circumstances of the present case, however, the Court does not find it necessary to determine this issue because, even assuming that the applicant has fulfilled this requirement, the complaint is in any event inadmissible for the following reasons.

The Court notes that the proceedings in question involved the determination of the applicant's right to stand as a candidate in the presidential elections. The dispute in issue, therefore, concerned the applicant's political right and did not have any bearing on his “civil rights and obligations” within the meaning of Article 6 § 1 of the Convention (see e.g. *Mutalibov v. Azerbaijan* (dec.), no. 31799/03, 19 February 2004; *Pierre-Bloch v. France*, judgment of 21 October 1997, *Reports of Judgments and Decisions*, 223, § 50). A 1997-VI, p. 2 accordingly, the Court finds that Article 6 of the Convention is not applicable to these proceedings.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

4. The applicant complains that the domestic remedies in his case were not effective. He relies on Article 13 of the Convention in conjunction with Article 6 of the Convention. Article 13 provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

According to the Court's case-law, Article 13 applies only where an individual has an arguable claim of a violation of his Convention rights (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). The Court has found above that the applicant's complaints under Article 6 of the Convention are either manifestly ill-founded or fall outside the scope of the Convention *ratione materiae*. For the same reasons,

the applicant does not have an “arguable claim” under that Article. Therefore, Article 13 of the Convention is inapplicable in this case.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

5. The applicant complains that he was unlawfully refused by the authorities to stand for presidential elections. He invokes Article 3 of Protocol No. 1 to the Convention, which reads as follows:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

The Court notes that Article 3 of Protocol No. 1 is concerned only with the “choice of the legislature.” The Court, nevertheless, recalls that the word “legislature” does not necessarily mean the national parliament; it has to be interpreted in the light of the constitutional structure of the State in question (see *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, p. 23, § 53).

Having regard to the relevant provisions of the Azerbaijani Constitution, the Court observes that the legislative power in Azerbaijan is exercised by the Milli Mejlis (the Parliament). The President of Azerbaijan, on the other hand, is the head of the executive power. However, the President is vested with a few powers that could be construed, to some very limited extent, as being related to the legislative power. In particular, he or she is empowered to sign and veto laws passed by the Parliament as well as issue presidential decrees and orders. However, he or she may not intervene with the pure power to legislate, *i.e.*, the power to adopt laws having supreme legal force, which belongs exclusively to the Parliament. The President may not issue any decree or order that would contradict or supersede the Parliament's legislation and is essentially confined in his or her powers to the implementation of such legislation. As such, whereas the Azerbaijani Constitution clearly provides for a separation of powers between the branches of the Government, the President's powers accessory to the Parliament's legislative power must be construed as being necessary and strictly limited to the system of the “checks and balances” of Azerbaijan's republican governmental structure.

Accordingly, the Court considers that the President's power to issue decrees and orders, as well as to sign or veto the legislative acts adopted by the Parliament, is to be distinguished from the legislative power. The Court concludes that Article 3 of Protocol No. 1 is not applicable in the present case, because the elections of the President of Azerbaijan cannot be interpreted as the “choice of the legislature” within the meaning of that Article.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.



6. The applicant further complains that the continued existence of the detention order constitutes, in substance, a restriction on his right to return to his country. He invokes Article 3 § 2 of Protocol No. 4 to the Convention, which provides as follows:

“No one shall be deprived of the right to enter the territory of the state of which he is a national.”

The Court stresses that this provision relates not to measures which affect an applicant's desire to enter a country, but rather to actual deprivation of his right to enter the country of which he is a national (see *C.B. v. Germany* (dec.), no. 22012/93, 11 January 1994). The Court considers that there is no fact indicating that the Azerbaijani authorities have formally prohibited the applicant from returning to Azerbaijan or that they would not otherwise allow the applicant to enter the territory of Azerbaijan if he wished to do so. The mere fact that the applicant does not want to return to the country where the detention order is waiting for him cannot lead the Court to any other conclusion. Accordingly, for the purposes of the invoked Article, the applicant's allegation that he is not allowed to return home is unsubstantiated.

Therefore, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

7. The applicant disagrees with the Court of Appeal's interpretation of the domestic criminal procedure law, according to which no appeal lied against the first instance decisions on the issue of replacing the detention on remand with a house arrest. He invokes Article 2 § 1 of Protocol No. 7, which provides, in the relevant part:

“Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. ...”

The Court reiterates that this provision of the Convention guarantees the right of appeal only to persons convicted of a criminal offence by a tribunal. In the instant case, the applicant so far has only been accused of a criminal offence. He has not been convicted of a criminal offence. Therefore, Article 2 § 1 of Protocol No. 7 is inapplicable in this case.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

8. The applicant complains under Article 14 of the Convention that, in respect of all the above complaints, he was discriminated on the ground of his political opinion. Article 14 provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... political ... opinion ...”

Firstly, as to Article 14 taken in conjunction with the applicant's complaints concerning the refusal to register him as a presidential candidate

as well as his complaint under Article 2 of Protocol No. 7, the Court reiterates that these complaints fall outside the scope of the Convention *ratione materiae*. As such, the applicant cannot rely on Article 14 of the Convention in conjunction with these complaints, because they do not relate to his “enjoyment of the rights and freedoms as set forth in [the] Convention.”

Secondly, as to Article 14 taken together with the applicant's remaining complaints relating to the allegedly fabricated criminal case and unlawful detention order, the Court considers that the applicant's discrimination claims appear to be unsubstantiated. The applicant has failed to adduce any evidence showing any direct link between his political activities and the authorities' actions against him. To the contrary, on the basis of the materials available in the case file, the Court notes that the criminal proceedings against the applicant were based on suspicion that he had committed crimes of general nature and were not formally related to his political activity. Likewise, the detention order was formally based on reasons other than the applicant's affiliation with an opposition party.

In such circumstances, the possible question remains whether the authorities were somehow politically motivated to institute the criminal proceedings that were not formally based on political grounds. To this effect, the Court notes that, in accordance with its findings above, the complaints relating to the allegedly fabricated criminal proceedings are premature as they stand now. Therefore, insofar as the criminal proceedings are still pending and there has been no trial and no conviction, the Court cannot speculate at this stage whether there have been any political motives behind the authorities' relevant actions.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President