



FIRST SECTION

CASE OF MAHMUDOV v. AZERBAIJAN

(Application no. 50612/18)

JUDGMENT

STRASBOURG

9 November 2023

This judgment is final but it may be subject to editorial revision.

In the case of Mahmudov v. Azerbaijan,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Krzysztof Wojtyczek, *President*,

Lətif Hüseyinov,

Erik Wennerström, *judges*,

and Liv Tiggerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 50612/18) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 25 October 2018 by an Azerbaijani national, Mr Kamran Eldeniz oglu Mahmudov (*Kamran Eldəniz oğlu Mahmudov* – “the applicant”), who was born in 1982, lives in Baku and was represented by Mr P. Hughes, Mr A. Jones, Mr C. Yeginsu and Ms A. Vermeer, lawyers based in the United Kingdom, and Mr K. Aghaliyev, a lawyer based in Azerbaijan;

the decision to give notice of the application to the Azerbaijani Government (“the Government”), represented by their Agent, Mr Ç. Əsgərov;
the parties’ observations;

Having deliberated in private on 17 October 2023,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The case concerns a travel ban imposed on the applicant, an independent journalist, in the absence of any judicial decision in that regard, and his allegedly unlawful arrest and detention.

2. On 22 June 2017 when attempting to cross the border between Azerbaijan and Georgia, the applicant was informed that his right to leave Azerbaijan had been restricted. He was detained by officers of the State Border Service, who subsequently transferred him to the Gazakh District Police Office (“the GDPO”), where he was held for approximately seven hours before being released.

3. It appears that the restriction on the applicant’s right to leave Azerbaijan had been imposed by the Ministry of Internal Affairs. However, the reason and legal basis for the imposition of such a restriction remain unclear.

4. Following his inability to obtain an adequate explanation from the relevant authorities regarding the restriction imposed on him, the applicant challenged its lawfulness, by lodging a complaint with the administrative courts. He also complained that he had been unlawfully arrested and detained.

5. The administrative courts refused to examine the applicant’s claims and dismissed them on procedural grounds. By a final decision of 13 March 2018,

the Supreme Court upheld the lower courts' decisions. The applicant was served with a copy of the Supreme Court's decision on 30 April 2018.

6. The applicant complained under Article 2 of Protocol No. 4 to the Convention that his right to leave Azerbaijan had been violated by the travel ban imposed on him by the domestic authorities. Relying on Articles 5 and 10 of the Convention, he also complained that his arrest and detention at the GDPO had been unlawful, and that the imposition of the travel ban on him had violated his freedom of expression.

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 § 1 OF THE CONVENTION

7. On 17 December 2019 the Government submitted a unilateral declaration with a view to resolving the issues raised by the application and asked the Court to strike the application out of its list of cases.

8. The applicant disagreed with the terms of the declaration, mainly arguing that the amount of compensation was insufficient, and that the Government had not acknowledged a violation of his rights under Articles 5 and 10 of the Convention.

9. Having studied the terms of the Government's unilateral declaration and finding in particular that the amount of compensation proposed does not constitute adequate and sufficient redress for the alleged violations of the applicant's rights under the Convention (compare *Mursaliyev and Others v. Azerbaijan*, nos. 66650/13 and 10 others, §§ 57-62, 13 December 2018), the Court considers that the proposed declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of this application (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, § 75, ECHR 2003-VI).

10. Therefore, the Court rejects the Government's request for the application to be struck out of its list of cases under Article 37 § 1 of the Convention and will pursue its examination of the admissibility and merits of the case.

II. THE GOVERNMENT'S OBJECTIONS AS REGARDS THE ADMISSIBILITY OF THE APPLICATION

11. The Government submitted that the applicant could not be considered a victim of any violation as no travel ban had been imposed on him. They also submitted that the applicant had not suffered significant disadvantage as his travel had only been restricted once.

12. As regards the first argument, the Court notes that it is undisputed that the applicant was prevented from leaving Azerbaijan on 22 June 2017 and later taken to the GDPO, where he was held for approximately seven hours. Despite that, the alleged violation of the applicant's rights has never been acknowledged at the domestic level and he has not received any sort of compensation in that regard. The Court therefore dismisses the Government's objection as to the applicant's victim status (compare *Mursaliyev and Others*, cited above, § 24).

13. As regards the second argument, the Court notes that in the light of the prominent place that the right to liberty has in a democratic society, it has so far rejected the application of the "no significant disadvantage" admissibility criterion in relation to complaints under Article 5 (see *Zelčš v. Latvia*, no. 65367/16, § 44, 20 February 2020, and *Mukhtarli and Aslanli v. Azerbaijan* [Committee], nos. 13509/12 and 64801/12, § 13, 2 March 2023). It does not see any reason to depart from that approach in the present case. Accordingly, it dismisses the Government's objection.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

14. The general principles concerning unlawful arrest and detention have been summarised in *Nasirov and Others v. Azerbaijan* (no. 58717/10, §§ 46-47, 20 February 2020).

15. The Court notes that in the present case it was undisputed by the parties that the applicant had been stopped at the Azerbaijan-Georgia border on 22 July 2017 and subsequently detained at the GDPO.

16. The Court further notes that, unlike in *Gahramanli v. Azerbaijan* ((dec.), no. 26291/06, § 45, 15 October 2013), where the applicant had been free to leave the airport immediately after his situation had been clarified, in the present case the applicant was taken to the GDPO following the refusal of the authorities to let him cross the border and held there for approximately seven hours.

17. It appears that this deprivation of liberty was not documented at all and constituted an unrecorded and unacknowledged detention, which, as the Court has consistently held, is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Nasirov and Others*, cited above, § 49).

18. This complaint is therefore admissible and discloses a violation of Article 5 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

19. The Court refers to the general principles established in its case-law and set out in *Mursaliyev and Others* (cited above, §§ 29-31), which are equally pertinent to the present case.

20. The Court finds it established that a travel ban was indeed imposed on the applicant. Turning to the circumstances of the present case, the Court notes that in *Mursaliyev and Others* (ibid., §§ 29-36), having examined an identical complaint, it found that the imposition of a travel ban on the applicants by the investigating authorities in the absence of any judicial decision was not “in accordance with law”. The Court considers that the analysis and finding it made in *Mursaliyev and Others* also apply to the present case and sees no reason to deviate from that finding.

21. This complaint is therefore admissible and discloses a violation of the applicant’s right to leave his country, as guaranteed by Article 2 of Protocol No. 4 to the Convention.

V. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

22. Having regard to the facts of the case, the submissions of the parties and its findings above (see paragraphs 18 and 21 above), the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to give a separate ruling on the admissibility and merits of the applicant’s complaint under Article 10 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Ganbarova and Others v. Azerbaijan* [Committee], nos. 1158/17 and 2 others, § 19, 21 September 2023).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. Despite being granted an extension of time allowed to submit his claims for just satisfaction, the applicant did not submit such a claim. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government’s request to strike the application out of its list of cases under Article 37 § 1 of the Convention;
2. *Declares* the complaints under Article 5 § 1 of the Convention and Article 2 of Protocol No. 4 to the Convention admissible;

MAHMUDOV v. AZERBAIJAN JUDGMENT

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 2 of Protocol No. 4 to the Convention;
5. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 10 of the Convention.

Done in English, and notified in writing on 9 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Krzysztof Wojtyczek
President