



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

FIRST SECTION

CASE OF NAGIYEV v. AZERBAIJAN

(Application no. 16499/09)

JUDGMENT

STRASBOURG

23 April 2015

FINAL

23/07/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Nagiyev v. Azerbaijan,

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

Elisabeth Steiner, *President*,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 31 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 16499/09) 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”) by an Azerbaijani national, Mr Asif Najaf oglu Nagiyev (*Asif Nəcəf oğlu Nağıyev* - “the applicant”), on 26 February 2009.

2. The applicant was represented by Mr V. Guliyev, a lawyer practising in Azerbaijan. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that his detention between 18 September 2008 and 10 March 2009 had been unlawful.

4. On 18 September 2013 the complaints concerning the lawfulness of the applicant’s detention and the effectiveness of the domestic remedies were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1980 and lives in Baku.

A. Institution of criminal proceedings against the applicant in Russia

6. On 15 November 2007 there was a bomb explosion in Moscow. Criminal proceedings were instituted in connection with this explosion and on 13 December 2007 the applicant was charged with unlawful possession of explosive materials under Article 222.2 of the Criminal Code of the Russian Federation.

7. On 21 December 2007 the Preobrazhensky District Court, Moscow City, ordered the application of the preventive measure of remand in custody in respect of the applicant and issued an arrest warrant.

8. On 26 December 2007 the arrest warrant was sent to the Ministry of Internal Affairs ("the MIA") of Azerbaijan.

9. It appears from a letter of 30 October 2008 signed by the head of the Criminal Investigation Department of the MIA that following the transfer of the arrest warrant to the Azerbaijani authorities the police contacted the applicant, who was in Azerbaijan, sometime in January 2008. The applicant came voluntarily to the MIA and submitted that he had no link with the explosion in question. The MIA established that the applicant was an Azerbaijani national and decided to transfer his statement to the relevant Russian authorities. At the request of the Russian authorities, on 31 January 2008 the applicant was again questioned at the MIA with the participation of two Russian police officers about his possible involvement in the explosion. Following a two-hour interrogation, no action was taken against the applicant and he left the premises of the Ministry.

B. The applicant's arrest and detention by the Organised Crime Department ("the OCD") of the MIA

1. The applicant's version of the events

10. On 30 June 2008 the applicant lodged a complaint with the Organised Crime Department ("the OCD") of the MIA about an alleged misappropriation of his property by a certain E.H. and others. Dissatisfied with the progress in the case, the applicant subsequently lodged complaints with various State authorities about the failure of the OCD to investigate his complaint.

11. On 18 September 2008 the applicant was summoned to the OCD and on arrival there he was arrested. The applicant was not allowed to contact his family or a lawyer, and his arrest was not documented.

12. As the applicant's family had no information about his whereabouts, on 21 September 2008 they lodged a criminal complaint with Khatai District Police Station No. 36 related to the applicant's disappearance, and submitted a photograph of him to the police.

13. On 22 September 2008 the OCD informed the applicant's family by telephone that the applicant had been arrested and detained in the temporary detention facility of the OCD.

14. On 24 September 2008 the applicant's brother was allowed to visit him in the temporary detention facility of the OCD. However, the applicant's family was not informed of the reasons for the applicant's arrest and detention.

15. On 26 September 2008 the applicant's family contacted a lawyer for the applicant's defence and at around 10 a.m. on 27 September 2008 a contract was concluded between them.

16. At around 3 p.m. on 27 September 2008 the lawyer went to the OCD and tried to meet the applicant. However, the lawyer was informed that he could not meet the applicant without the authorisation of the investigator. The lawyer immediately sent telegrams to the MIA, the Prosecutor General's Office and the Ombudsman complaining that he had been prevented from meeting the applicant.

17. At around 9 p.m. on 27 September 2008 the applicant was brought before a judge of the Narimanov District Court who ordered his detention on remand (see paragraph 22 below). His lawyer was not informed about the hearing; the applicant was represented by a State-appointed lawyer.

18. While detained in the temporary detention facility of the OCD, he was during the period from 18 September to 2 October 2008 forced to change his statement in the criminal case concerning the misappropriation of his property by E.H. and others.

19. As regards the criminal complaint lodged by his family (see paragraph 12 above), by letter of 2 October 2008 the head of Khatai District Police Station No. 36 informed the applicant's family of the investigator's refusal to institute criminal proceedings in connection with his disappearance. The relevant part of the decision reads as follows:

"On 21 September 2008 citizen B. Nagiyev lodged a complaint with Khatai District Police Station No. 36, stating that his brother, Nagiyev Asif Najaf oglu [the applicant], born in 1980, left his home at around 1.15 p.m. on 19 September 2008 and has not returned.

Citizen B. Nagiyev also made a statement confirming the content of his complaint.

A report was prepared and transferred to Khatai District Police Station No. 36 in connection with the search for Asif Nagiyev [the applicant]. During the search, all the police stations in Baku were instructed and other measures were taken.

During the search, non-official information was received indicating that Asif Nagiyev had been arrested by the OCD of the MIA because he was wanted in Russia. An enquiry in this regard was sent to the OCD, but no response has yet been received.

The whereabouts of A. Nagiyev have not yet been clearly established.

Taking into account that there is no evidence that a crime has been committed, institution of criminal proceedings in connection with this subject should be rejected."

2. *The Government's version of the events*

20. The applicant was arrested at around noon on 27 September 2008. The relevant part of the official record of the applicant's arrest (*cinayət törətmiş şəxsin tutulması barədə protokol*) of 27 September 2008 reads as follows:

“... At around noon on 27 September 2008, Nagiyev Asif Najaf oğlu [the applicant], whose identity was established later, born on ... and in ... was arrested in the district of Narimanov in Baku and taken to the department. It was established during questioning there that on 21 December 2007 Nagiyev Asif Najaf oğlu was charged under Article 222.2 (unlawful possession of explosive materials) of the Criminal Code of the Russian Federation by the Moscow City Prosecutor's Office ... an arrest warrant was issued, and the application of the preventive measure of remand in custody was ordered ...

Nagiyev Asif Najaf oğlu was transferred to the temporary detention facility of the OCD ...”

21. It appears from the extracts from the logbook of the OCD's temporary detention facility submitted to the Court by the Government that the applicant arrived at the detention facility at 4 p.m. on 27 September 2008 following a decision of a Narimanov District Court judge.

C. **The applicant's remand in custody**

22. On 27 September 2008 a judge of the Narimanov District Court, relying on the Russian court's detention order of 21 December 2007, ordered the application of the preventive measure of remand in custody in respect of the applicant for a period of two months. At the hearing the applicant was represented by a State-appointed lawyer. The judge relied on the provisions of the Code of Criminal Procedure (“the CCrP”) of the Republic of Azerbaijan relating to detention with a view to extradition when she ordered the applicant's detention. The judge justified this measure as follows:

“Taking into account the fact that Nagiyev Asif Najaf oğlu committed a less serious criminal offence and, if released, would obstruct the objective functioning of the investigation by absconding from it, I consider it necessary to confirm the decision of 21 December 2007 of the Federal Court of Preobrazhensky District, Moscow City, to apply the preventive measure of remand in custody in respect of him for a period of two months.

In fact, according to Article 495.1 of the CCrP of the Republic of Azerbaijan, upon receipt of a request for extradition of a person and a copy of a detention order in respect of him from the competent authority of a foreign State, the prosecuting authority of the Republic of Azerbaijan to which the request is addressed may, if necessary, take measures in compliance with the provisions of this Code to have the person arrested and detained before a decision on extradition is taken.”

23. Following a series of complaints to the various domestic authorities, on 8 October 2008 the applicant's lawyer was provided with a copy of the record of the applicant's arrest and the Narimanov District Court's decision of 27 September 2008.

24. On an unspecified date the applicant appealed against the Narimanov District Court's decision of 27 September 2008, claiming that his arrest and detention had been unlawful. In particular, he submitted that he had been unlawfully arrested on 18 September 2008 and that there were no criminal proceedings pending against him in Azerbaijan. He further argued that as he was an Azerbaijani national he could not be extradited to a foreign State, which followed from Article 53 of the Constitution of the Republic of Azerbaijan and Article 13 of the Criminal Code. He also submitted that his arrest and detention had not been carried out in accordance with domestic and international law, since no official request accompanied by the relevant documents for his detention and extradition was ever submitted by the Russian authorities. The applicant's lawyer also submitted a request for restoration of the time-limits for lodging an appeal. In this connection, the lawyer stated that although at 10 a.m. on 27 September 2008 the applicant's family had appointed him as a lawyer for the applicant's defence, he had not been informed of the Narimanov District Court's hearing, which was held at around 9 p.m. on 27 September 2008. He further noted that he had been provided with a copy of the detention order only on 8 October 2008.

25. On 3 November 2008 the Narimanov District Court granted the request for restoration of the time-limits for lodging an appeal and forwarded the applicant's appeal to the appellate court for examination.

26. On 7 November 2008 the Baku Court of Appeal upheld the Narimanov District Court's decision of 27 September 2008 without considering the applicant's specific complaints.

27. On 27 November 2008 the Narimanov District Court granted the prosecutor's request for the extension of the applicant's detention for a period of two months, relying on Article 159 of the CCrP concerning the extension of detention periods pending criminal proceedings. In its decision, the court noted that as the applicant was an Azerbaijani national he could not be extradited to a foreign State, and for this reason the Azerbaijani Prosecutor General's Office had requested the Russian Prosecutor General's Office to transfer the applicant's criminal case to the Azerbaijani authorities. The court thus justified the extension of the applicant's detention period by the fact that more time was needed for the submission of relevant documents relating to the applicant's case from the Russian Prosecutor General's Office to the Azerbaijani authorities. The relevant part of the decision reads as follows:

“As the extradition of Nagiyev Asif Najaf oglu to Russia is impossible because he is a citizen of the Republic of Azerbaijan, a request was sent to the Russian Prosecutor General's Office for the criminal case to be transferred to the Azerbaijani Prosecutor

General's Office for the criminal inquiry to be continued in the Republic of Azerbaijan.

Taking into account the fact that more time is needed for the transfer of the criminal case relating to the accused Nagiyev Asif Najaf oglu from the Russian Prosecutor General's Office to the Azerbaijani Prosecutor General's Office, but that the detention period of Nagiyev Asif Najaf oglu ends on 27 November 2008, I consider the request justified in order to ensure the criminal prosecution of Nagiyev Asif Najaf oglu in the future and to prevent him from absconding from the court proceedings.

Taking into account the above-mentioned matters and relying on Articles 159, 448 and 454 of the CCrP, I decide that the detention period of Nagiyev Asif Najaf oglu born on ... and in ... must be extended for a period of two months, until 27 January 2009."

28. The applicant appealed against this decision, claiming that the extension of his detention was unlawful. He noted in particular that although the court had relied on Article 159 of the CCrP concerning the extension of detention periods pending criminal proceedings when it ordered the extension of his detention, there were no criminal proceedings pending against him in Azerbaijan, and therefore his detention could not be extended on this basis. He also submitted that the court had failed to justify the extension of his detention, and that his continued detention was in breach of the relevant international conventions. The applicant further reiterated the complaint concerning his unlawful detention from 18 to 27 September 2008 in the OCD, noting that the main reason for his detention was his complaint concerning misappropriation of his property by E.H. and others. In this connection he disputed the content of the official record of his arrest, stating that his family could not possibly have known about his arrest at 10 a.m. on 27 September 2008 and concluded a contract with his lawyer for his defence, if he had been arrested at noon on 27 September 2008 as indicated in the official record.

29. On 5 December 2008 the Baku Court of Appeal dismissed the applicant's appeal. The appellate court made no mention of the applicant's particular complaints.

30. On 12 December 2008 the applicant lodged a request with the Narimanov District Court, asking the court to replace his remand in custody with the preventive measure of house arrest. He claimed, in particular, that his detention had not been justified and that there was no reason for his continued detention. In support of his request, the applicant pointed out that he had a permanent place of residence and that there was no risk of his absconding from or obstructing the investigation.

31. On 19 December 2008 the Narimanov District Court dismissed the request.

32. On 27 January 2009 the Narimanov District Court extended the applicant's detention for a period of one month, relying on Article 159 of the CCrP concerning the extension of detention periods pending criminal proceedings. As to the justification for the extension of the applicant's

detention, the court relied on an almost identical wording as that of the court's decision of 27 November 2008.

33. On 29 January 2009 the applicant appealed against this decision, reiterating his previous complaints. He noted in this regard that the domestic courts had ignored his complaint concerning his unlawful detention in the temporary detention facility of the OCD from 18 to 27 September 2008. He further stated that although the Russian authorities had never submitted any extradition request or a request for institution of criminal proceedings against him in Azerbaijan, he had been detained in breach of the domestic and international law. In particular, he referred to Article 497.1 of the CCrP, which provides that a person arrested with a view to extradition must be released if no official request for his extradition is received by the Azerbaijani prosecuting authority within forty-eight hours of his arrest.

34. On 2 February 2009 the Baku Court of Appeal upheld the first-instance court's decision. The appellate court made no mention of the applicant's specific complaints.

35. On 27 February 2009 the Narimanov District Court again extended the applicant's detention for a period of one month. The court's decision was almost identical in its wording to the decisions of 27 November 2008 and 27 January 2009.

36. On 2 March 2009 the applicant appealed against this decision. He reiterated that the domestic courts had ignored his complaint concerning his unlawful detention in the temporary detention facility of the OCD from 18 to 27 September 2008. He further stated that it was not legitimate for the domestic courts to order the extension of his detention on the ground that more time was needed for the transfer of relevant documents from the Russian authorities to their Azerbaijani counterparts.

37. On 10 March 2009 the Baku Court of Appeal granted the applicant's appeal and ordered his release. The appellate court quashed the Narimanov District Court's decision of 27 February 2009, holding that the first-instance court had erred in extending the applicant's continued detention. The relevant part of the decision reads as follows:

"It appears from the OCD's decision of 22 September 2008, concerning an operational-search measure and which was added to the case file, that a decision concerning an operational-search measure in respect of Nagiyev Asif Najaf oglu, who was wanted for a crime committed in Russia, was taken.

The record of the applicant's arrest, drawn up by ..., indicates that Nagiyev Asif Najaf oglu was arrested on 27 September 2008.

In accordance with the requirements of Article 495.1 of the CCrP of the Republic of Azerbaijan, upon receipt of a request for extradition of a person and a copy of a detention order in respect of him from the competent authority of a foreign State, the prosecuting authority of the Republic of Azerbaijan to which the request is addressed may, if necessary, take measures in compliance with the provisions of this Code to have the person arrested and detained before the decision on extradition is taken ...

In accordance with paragraph II of Article 53 of the Constitution of the Republic of Azerbaijan, a citizen of the Republic of Azerbaijan may under no circumstances be extradited to a foreign state.

In accordance with Article 13 of the Criminal Code, a citizen of the Republic of Azerbaijan who has committed a crime on the territory of a foreign state shall not be extradited to that foreign state ...

In accordance with the requirements of Article 75 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 13 January 2004, if a request for extradition, as provided for in Article 67 of the Convention, and accompanying documents were not transferred within forty days of the date of arrest of the person arrested, the person must be immediately released.

It appears that A. Nagiyev has been in detention for five months and thirteen days, or one hundred and sixty-three days, and that during this period no additional material concerning him was sent from the Russian Federation to the Azerbaijani authorities ...

Therefore, taking into account the above-mentioned findings, the panel of the court considers that the appeal of the lawyer must be granted and that the Narimanov District Court's decision on extension of A. Nagiyev's detention period must be quashed."

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

38. Article 53 (II) of the Constitution of the Republic of Azerbaijan reads as follows:

"A citizen of the Republic of Azerbaijan may under no circumstances be expelled from the Republic of Azerbaijan or extradited to a foreign state."

39. Part II of Article 148 establishes that international treaties to which the Republic of Azerbaijan is a party constitute an integral part of the legal system of the Republic of Azerbaijan.

B. The Criminal Code

40. Article 13 of the Criminal Code provides:

Article 13 – Extradition of persons who have committed crimes

"13.1 Citizens of the Republic of Azerbaijan who have committed crimes on the territory of a foreign state shall not be extradited to that foreign state ...

13.3 If those who have committed crimes outside the limits of the Republic of Azerbaijan are not to be extradited to the foreign state and their act (whether of commission or omission) is considered a criminal offence in accordance with this Code, they are to be prosecuted in the Republic of Azerbaijan ..."

C. The Code of Criminal Procedure (“CCrP”)

41. The relevant provisions of the CCrP concerning pre-trial detention, the application of the preventive measure of remand in custody, and the extension of detention periods pending criminal proceedings, are described in detail in the Court’s judgments in *Farhad Aliyev v. Azerbaijan* (no. 37138/06, §§ 83-102, 9 November 2010), and *Muradverdiyev v. Azerbaijan* (no. 16966/06, §§ 35-49, 9 December 2010).

42. Chapter LVII of the CCrP deals with legal assistance in criminal matters. Article 495.1 provides that upon receipt of a request for extradition and a copy of a detention order from the competent authority of a foreign State, the prosecuting authority of the Republic of Azerbaijan to which the request is addressed may, if necessary, take measures to have the person arrested and detained before the decision on extradition is taken.

43. In accordance with Article 495.3, on the basis of a request from the competent authority of the foreign state, and in compliance with the provisions of this Code, the prosecuting authority of the Republic of Azerbaijan to which the request is addressed may, if necessary, take measures to have the person arrested even before receipt of an official request for extradition. In these circumstances, the petition must indicate that the foreign state will submit an official request for extradition within forty-eight hours.

44. Article 497.1 provides that a person arrested under Article 495.3 must be released if no official request for his extradition is received by the Azerbaijani prosecuting authority within forty-eight hours of his arrest.

45. Article 502.1 provides that the prosecuting authority of the Republic of Azerbaijan must, upon an official request by the competent authority of a foreign State, and in accordance with Azerbaijani law, institute criminal proceedings against any citizen of the Republic of Azerbaijan suspected of committing a criminal offence on the territory of the requesting State. If the criminal case transferred was instituted by the competent authority of the foreign State, the Azerbaijani prosecuting authority to which the request was addressed shall pursue the investigation of the case in accordance with Azerbaijani law (Article 503 § 3).

III. RELEVANT INTERNATIONAL DOCUMENTS

46. There are two conventions relating to legal assistance in criminal matters concluded between CIS member States : the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993 (“the 1993 Minsk Convention”), signed on 22 January 1993 in Minsk, to which both Azerbaijan and Russia are parties, and the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal

Matters, signed on 7 October 2002 in Chisinau, to which Azerbaijan has been a party since 13 January 2004 but Russia is not.

47. Article 60 of the 1993 Minsk Convention provides that upon receipt of a request for extradition the requested State should immediately take measures to search for and arrest the person whose extradition is sought, except in cases where no extradition is possible. The person whose extradition is sought may be arrested before receipt of a request for extradition, if there is a related request. That request must contain a reference to a detention order and indicate that a request for extradition will follow (Article 61 § 1). If the person is arrested before receipt of the extradition request, the requesting State must be informed immediately (Article 61 § 3).

48. A person arrested under Article 61 must be released if no request for extradition is received within forty days of the arrest (Article 62 § 1).

49. Article 72 provides that each Contracting Party is obliged, by the commission of another Contracting Party, to institute criminal proceedings against its own citizens suspected of committing a criminal offence on the territory of the requesting Contracting Party. If the requesting Contracting party transfers a criminal case which has already been instituted to the requested Contracting Party, the latter must continue the investigation in accordance with its own legislation (Article 73).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

50. Relying on Articles 5 and 13 of the Convention, the applicant complained that his detention between 18 September 2008 and 10 March 2009 had been unlawful and that he had had no effective remedy in this respect. The Court considers that the present complaint falls to be examined solely under Article 5 of the Convention. The relevant part of Article 5 reads as follows:

“1. 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:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

A. Admissibility

51. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

52. The Government submitted that the applicant had not been arrested by agents of the OCD on 18 September 2008. In this connection, they relied on the record of the applicant's arrest of 27 September 2008 and the extracts from the logbook of the OCD's temporary detention facility. The Government did not make any observations as to the lawfulness of the applicant's detention between 27 September 2008 and 10 March 2009.

53. The applicant submitted that there had been no legal basis for his detention between 18 September 2008 and 10 March 2009. As to the beginning of his detention, he disagreed with the Government, stating that he had been arrested on 18 September 2008. In this connection, the applicant drew attention to the circumstances of his arrest and to inconsistencies in the documents submitted by the Government. In particular, he noted that his family could not have known about his arrest and appointed a lawyer for his defence at 10 a.m. on 27 September 2008 if he had been arrested only at noon on 27 September 2008 as indicated in the official record of the arrest. He further pointed out that according to the extracts from the logbook of the OCD's temporary detention facility he arrived at the detention facility at 4 p.m. on 27 September 2008 following a decision of the Narimanov District Court, however he was brought before a judge of that court only at 9 p.m. on 27 September 2008. Lastly, the applicant stated that on 21 September 2008 his family lodged a criminal complaint concerning his disappearance with Khatai District Police Station

No. 36, which confirmed his detention in the OCD by a letter of 2 October 2008.

2. *The Court's assessment*

(a) **General principles**

54. The Court reiterates that Article 5 enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty (see *Aksoy v. Turkey*, 18 December 1996, § 76, *Reports of Judgments and Decisions* 1996-VI). Article 5 § 1 sub-paragraphs (a) to (f) contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008-...).

55. The Court further notes that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (see, among other authorities, *Douiye v. the Netherlands* [GC], no. 31464/96, §§ 44-45, 4 August 1999).

56. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. What is at stake here is not only the “right to liberty” but also the “right to security of person” (see, among other authorities, *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, and *Wassink v. the Netherlands*, 27 September 1990, § 24, Series A no. 185-A). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1, and the notion of “arbitrariness” in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi*, cited above, § 67).

57. The Court also reiterates that the unacknowledged detention of an individual 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 *Kurt v. Turkey*, 25 May 1998, § 125, *Reports* 1998-III, and *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV).

(b) Application of those principles to the present case

58. The Court observes at the outset that in the present case it is undisputed that the applicant was in detention between 27 September 2008 and 10 March 2009. However, the parties are in dispute as to the beginning of the applicant's detention, the applicant maintaining that he was arrested on 18 September 2008 and the Government arguing that he was arrested on 27 September 2008.

59. The Court notes that the Government relied on the record of the applicant's arrest of 27 September 2008 and the extracts from the logbook of the OCD's temporary detention facility in support of their factual claim that the applicant was arrested on 27 September 2008. These documents indicate that at around noon on 27 September 2008 the applicant was arrested in the district of Narimanov in Baku and that at 4 p.m. on 27 September 2008 he arrived at the temporary detention facility of the OCD on the basis of the Narimanov District Court's decision. However, the Court observes numerous shortcomings and inconsistencies in the documents submitted by the Government.

60. Firstly, the Court observes that the record of the applicant's arrest of 27 September 2008 does not contain any information concerning the reasons for the applicant's arrest. In particular, it is not clear from the record on which ground the police arrested the applicant at around noon on 27 September 2008 in the district of Narimanov in Baku and then brought him to the OCD (see paragraph 20 above).

61. Secondly, it appears from the case file that the applicant disputed in the domestic proceedings the content of the official record of his arrest, stating that his family could not have known about his arrest at 10 a.m. on 27 September 2008 and concluded a contract with the lawyer for his defence if he had been arrested at noon on 27 September 2008 as indicated in the official record. However, the domestic courts never addressed this complaint (see paragraphs 24-37 above). In any event, the applicant's submissions, that at 10 a.m. on 27 September 2008 his family appointed a lawyer for his defence, were neither disputed in the domestic proceedings nor before the Court. Nor was it disputed that the applicant was brought for the first time before a judge of the Narimanov District Court at 9 p.m. on 27 September 2008. In these circumstances, the Court does not see how the applicant's family could have known about the applicant's arrest at 10 a.m. on 27 September 2008, namely two hours before the official time of his arrest. Furthermore, the applicant could not have arrived at the OCD's temporary detention facility at 4 p.m. on 27 September 2008 on the basis of

the Narimanov District Court's decision as indicated in the extracts from the logbook of the OCD's temporary detention facility, since he had been brought before a judge of the latter court at 9 p.m. on 27 September 2008.

62. Lastly, the fact that on 21 September 2008 the applicant's family lodged a criminal complaint with Khatai District Police Station No. 36 in connection with the applicant's disappearance corroborates the applicant's factual claim. In particular, by a letter of 2 October 2008, Khatai District Police Station No. 36 informed the applicant's family that it had informed all the police stations in Baku about the applicant's disappearance and had taken appropriate actions to find him. Moreover, in the same letter, although Khatai District Police Station No. 36 failed to specify the exact day of the applicant's arrest, it was stated that according to non-official information obtained during the search the applicant had been arrested by the OCD, which had failed to reply to the police's official enquiry (see paragraph 19 above). In this connection, the Court also cannot overlook the fact that the Baku Court of Appeal in its decision of 10 March 2009 referred to an operational-search measure in respect of the applicant which appears to have been put into operation prior to 22 September 2008 (see paragraph 37 above).

63. Accordingly, in view of the Government's inability to provide convincing and relevant evidence in support of their version of events and the consistent and plausible nature of the applicant's submissions and evidence, the Court accepts the applicant's version of events concluding that he had been in detention in the OCD since 18 September 2008. The Court thus considers that the applicant's detention began on 18 September 2008.

64. As regards the question whether the entire period of the applicant's detention was "lawful" within the meaning of Article 5 § 1 of the Convention, the Court notes that the applicant's deprivation of liberty, from 18 to 27 September 2008, was not documented at all. The Court reiterates in this connection that the unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention, and discloses a grave violation of that provision (see paragraph 57 above).

65. As regards the applicant's detention during the period from 27 September 2008 to 10 March 2009, the Court notes that the applicant's detention with a view to extradition was clearly contrary to the relevant provisions of the Constitution and the Criminal Code, which exclude in non-ambiguous terms the extradition of Azerbaijani nationals to foreign states (see paragraphs 38 and 40 above).

66. The Court further observes that the domestic courts justified the applicant's continued detention by the fact that more time was needed for the submission of relevant documents relating to the applicant's case from the Russian Prosecutor General's Office to the Azerbaijani authorities

relying on the CCrP's provisions concerning the extension of detention periods pending criminal proceedings.

67. However, although the domestic courts referred to the CCrP's provisions concerning the extension of detention periods pending criminal proceedings in their decisions, there were no criminal proceedings against the applicant in Azerbaijan. Moreover, although it is possible under the domestic law and the Minsk Convention for criminal proceedings to be instituted against an Azerbaijani citizen suspected of committing a criminal offence on the territory of a foreign state upon an official request by the competent authority of a foreign State, no such request was submitted by the Russian authorities in the present case. In particular, it appears from the case file that following the applicant's questioning in the presence of two Russian police officers on 31 January 2008, the Russian authorities never sought criminal prosecution of the applicant in Azerbaijan. In these circumstances the Court cannot but conclude that the applicant's deprivation of liberty during the period from 18 September 2008 to 10 March 2009 was unlawful and arbitrary.

68. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

70. The applicant claimed EUR 250,000 in respect of non-pecuniary damage.

71. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 12,000 under this head, plus any tax that may be chargeable on this amount.

B. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount, which is to be converted into Azerbaijani manats (AZN) at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Elisabeth Steiner
President