



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

## FIRST SECTION

### DECISION

Application no. 26291/06  
Adil Soltan Oglu GAHRAMANOV  
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 15 October 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,  
Elisabeth Steiner,  
Khanlar Hajiyeu,  
Mirjana Lazarova Trajkovska,  
Julia Laffranque,  
Linos-Alexandre Sicilianos,  
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 21 June 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr Adil Soltan oglu Gahramanov (*Adil Soltan oğlu Qəhrəmanov*), is an Azerbaijani national, who was born in 1957 and lives in Baku.

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

### **A. The circumstances of the case**

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

4. The applicant was involved in three unrelated sets of proceedings.

#### *1. First set of proceedings*

5. The applicant was a member of the Civic Union Party.

6. On 10 October 2001 the applicant was arrested by officers of the Ministry of National Security (“the MNS”) and charged with unlawful possession of weapons and conspiracy to usurp State power by force, under Articles 28, 32, 228 and 278 of the Criminal Code.

7. On 5 September 2002 the Assize Court convicted the applicant of all charges and sentenced him to ten years’ imprisonment.

8. On 20 December 2002 the Court of Appeal upheld the Assize Court’s judgment.

9. The applicant was dispensed from serving the remainder of his sentence following a presidential pardon of 20 March 2005.

10. On 24 August 2005 the applicant lodged a cassation appeal against the Court of Appeal’s judgment of 20 December 2002. On 17 January 2006 the Supreme Court refused to entertain the applicant’s cassation appeal, as the applicant had failed to lodge it within eighteen months of the date of delivery of the Court of Appeal’s judgment.

#### *2. Second set of proceedings*

11. The applicant was involved in a private property dispute with his brother-in-law over ownership rights to a flat and a retail shop situated in Baku.

12. On 31 March 2006 the Nasimi District Court dismissed both parties’ claims, finding them unsubstantiated.

13. On 4 July 2006 the Court of Appeal quashed the judgment of 31 March 2006 in part and delivered a new judgment on the merits in favour of the applicant’s brother-in-law.

14. On 8 February 2007 the Supreme Court upheld the Court of Appeal’s judgment.

#### *3. Third set of proceedings*

##### **(a) The applicant’s detention at Baku Heydar Aliyev Airport**

###### *(i) The applicant’s version of the events*

15. On an unspecified date in 2006 the applicant bought a ticket for a flight from Baku to Dubai which was scheduled to depart at 11 a.m. on 18 July 2006.

16. The applicant arrived at Baku Heydar Aliyev Airport at 8.30 a.m. on 18 July 2006. Check-in for the Dubai flight began at 9 a.m. and the applicant checked in his baggage. After checking it in the applicant went to the passport control desk. The officer who examined his documents told him to wait and called her supervisor. Without identifying himself, her supervisor instructed the applicant to go to the neutral zone and wait there.

17. A few minutes later an officer identifying himself as E.H. explained to the applicant that he had been removed from the flight by order of the MNS and that he should wait in the State Border Service (“the SBS”) room until MNS officers arrived. The applicant was taken to the SBS room and was not otherwise informed of the reasons for this measure.

18. During his stay in the SBS room, the applicant was not free to leave the room and had no opportunity to contact others. In the meantime the applicant’s baggage was searched by SBS officers. The applicant asked the SBS officers to draw up a record of his detention and of the search of his baggage. However, they refused to do so.

19. The applicant remained in the SBS room until 2.20 p.m., when, after a telephone conversation with an unidentified person, E.H. allowed him to leave the airport. The applicant refused to leave the airport without obtaining documents regarding his detention. Following the applicant’s continued requests, a person identifying himself as an officer of the MNS threatened him on the telephone and insisted that he leave the airport immediately.

20. Before the applicant left the airport the customs officers issued him with a report on the search of his baggage.

*(ii) The Government’s version of the events*

21. On 18 July 2006 the applicant was removed from the flight from Baku to Dubai, following the passport control carried out by officers of the SBS, because his name appeared on a “Border crossing restriction” list with the status “to be stopped” (*saxla*). A record of the prevention of the passenger from crossing the State border was drawn up.

22. The applicant was then taken to the SBS room for further clarification and to be handed over to officials of the MNS. Following clarification of the applicant’s situation, he was permitted to leave the airport. As to the reason why the applicant’s name appeared on the list with the status of “to be stopped”, the Government pointed out that this was because the MNS had failed to remove his name from the “Border crossing restriction” list after he had been pardoned by a presidential decree of 30 March 2005. The applicant spent only two hours in the SBS room.

23. As regards the record of the applicant’s detention, the Government noted that a document on this had been drawn up, but subsequently destroyed following the decision of the MNS to take no further action.

**(b) The proceedings before the domestic courts**

24. On an unspecified date the applicant brought an action against the SBS for violation of his rights and seeking compensation for unlawful detention by law-enforcement officers. In particular, he complained that he had been unlawfully deprived of his liberty on 18 July 2006 at Baku Heydar Aliyev Airport.

25. On 10 October 2006 the Azizbeyov District Court dismissed the applicant's claim. The relevant part of the judgment reads as follows:

"It appears from the documents, extract of the AMAC (search list) [database of the SBS], submitted by the defendant that Gahramanov Adil was stopped at 9.29 a.m. on 18 July 2006 when he was about to board the Baku-Dubai flight.

It can be seen from the record of 18 July 2006 of the prevention of the passenger from crossing the State border that on 18 July 2006 the passenger, a national of the Republic of Azerbaijan, Gahramanov Adil Soltan oglu, was not authorised to be registered during registration for the Baku-Dubai flight no. 011 because he appeared under the status "to be stopped" in the AMAC [database of the SBS].

... the court finds that on 18 July 2006 the applicant was removed from the flight by the Border Service in order to ensure security while he was waiting for the Baku-Dubai flight. The representative of the State Border Service, which is the defendant, has also confirmed this. Following the relevant control, a record was drawn up and the applicant was released. The price of the ticket was reimbursed at his request. During the court's examination it has not been established that the applicant sustained any non-pecuniary damage when he was removed from the flight.

Therefore, the court considers that the claim should not be granted as it is unsubstantiated and unlawful..."

26. The applicant appealed against that judgment. He complained, in particular, that he had been unlawfully detained for more than four hours at the airport and that the first-instance court had failed to consider the role that the MNS had played in his detention.

27. On 7 February 2007 the Court of Appeal upheld the judgment of 10 October 2006. The relevant part of the judgment reads as follows:

"It appears from the extract of the record of 18 July 2006 of the prevention of the passenger from crossing the State border that on 18 July 2006 the passenger, a national of the Republic of Azerbaijan, Gahramanov Adil Soltan oglu, was not authorised to be registered during registration of the Baku-Dubai flight no. 011 because he appeared under the status "to be stopped" in the AMAC [database of the SBS].

...the panel of the court considers that the SBS acted within its powers when it stopped A. Gahramanov and that the search of his person and his belongings was carried out for security reasons and that he was subsequently released and permitted to travel, but refused to do so and obtained reimbursement of the price of the ticket..."

28. The applicant lodged a cassation appeal reiterating his previous complaints.

29. On 29 May 2007 the Supreme Court upheld the Court of Appeal's judgment. The relevant part of the judgment reads as follows:

"The panel of the court considers that the appellate court correctly applied the substantive and procedural law when examining the case and that the grounds stated in the cassation appeal do not constitute reasons for quashing the court judgment."

## **B. Relevant domestic law**

30. In accordance with Article 2 § 2 of the Regulations on Application of the Law on Departure from and Entrance into the Country and on Passports, approved by Decision of the Parliament on 29 November 1994 ("the Regulations"), if a citizen was suspected of committing a crime or charged with a criminal offence, was convicted of a crime or sentenced to compulsory measures of a medical nature, was asked to perform his fixed-term military service or there was a court decision in force restricting his departure from the country, his rights to leave and enter the country would be temporarily restricted by refusal to issue him with a passport by a decision of an authorised representative of a passport-issuing authority. Article 2 § 4 of the Regulations provided that if the reason for restricting a citizen's right to leave the country materialised after he had been provided with a passport, his departure from the country could be temporarily restricted by a decision of an authorised representative of the State Border Service at a checkpoint.

## **COMPLAINTS**

31. In respect of the third set of proceedings (see paragraphs 15-29 above) the applicant complained under Article 5 of the Convention that he had been unlawfully detained at Baku Heydar Aliyev Airport on 18 July 2006. Relying on Articles 6, 7 and 13 of the Convention, he also complained that the domestic proceedings concerning his detention on 18 July 2006 at Baku Heydar Aliyev Airport had been unfair and that the domestic courts had been ineffective.

32. The applicant complained further, relying on Article 5 of the Convention, that his pre-trial detention in the first set of proceedings (see paragraphs 5-10 above) had been unlawful. He further complained, under Article 6 of the Convention, that the criminal case against him had been fabricated and that the domestic courts had erred in assessing the evidence. The applicant also complained, under Articles 7 and 13 of the Convention, that he had been unlawfully convicted and that the domestic courts had been ineffective.

33. Relying on Articles 5, 6, 7 and 13 of the Convention, the applicant also complained that the civil proceedings before the domestic courts had not been fair and that the courts had misinterpreted the relevant law (see paragraphs 11-14 above).

## THE LAW

### **A. Complaint concerning the applicant's detention at Baku Heydar Aliyev Airport**

34. The applicant complained that he had been detained at Baku Heydar Aliyev Airport on 18 July 2006 without any legal basis and in breach of Article 5 of the Convention. The relevant part of Article 5 of the Convention 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”

35. The Government submitted that the applicant's removal from the flight on 18 July 2006 and his detention in the SBS room had been lawful. The Government noted that the applicant's name had appeared during the passport control with the status of “to be stopped”, so he had been taken to the SBS room for his situation to be further clarified and to be handed over to officials of the MNS. The procedure applied in respect of the applicant's removal from the flight was a normal procedure as carried out in every airport around the world for security reasons.

36. The Government further submitted that the applicant's stay in the SBS room had lasted only approximately two hours and did not amount to a deprivation of liberty within the meaning of Article 5 of the Convention. In that connection the Government stated that the applicant had not been detained in any special detention facility and that there had only been a minor degree of confinement in the SBS room. Moreover, according to the Government, the applicant had been free to leave the airport following a two-hour stay in the room, but had refused to do so, asking for a written record of his detention, and therefore his further stay at the airport had been due to the applicant's own conduct. As regards whether the applicant's detention complied with the national law, the Government relied on the provisions of the Regulations of 29 November 1994.

37. The applicant maintained his complaint, reiterating that his detention for approximately four hours at the airport had been unlawful. In particular, he submitted that he had been detained in the SBS room and not permitted to leave the room. He also noted that he had had no opportunity to contact members of his family during his detention and that he had not been provided with any document relating to the detention.

38. The Court notes that it must first examine whether there was in the instant case a deprivation of liberty to which Article 5 applies. The Court reiterates that Article 5 of the Convention enshrines a fundamental right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. In proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. It is not concerned with mere restrictions on the liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4. In order to determine whether there has been a deprivation of liberty, the starting point must be the specific situation of the individual concerned, and account must be taken of a whole range of factors arising in a particular case, such as the type, duration, effects and manner of implementation of the measure in question. The distinction between a deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A no. 39, and *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 57, ECHR 2012).

39. The Court further points out that Article 5 § 1 may apply to deprivations of liberty of a very short length, for example where applicants were stopped for a search which did not exceed thirty minutes (see *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010 (extracts)) or the length of time during which the applicant was held at the police station did not exceed forty-five minutes (see *Shimovolos v. Russia*, no. 30194/09, §§ 48-50, 21 June 2011). However, the Court observes that in the present case the applicant was detained in circumstances which were

different from those described above where the applicants' detention was due to intervention by the police. In the instant case the applicant was stopped by border officials following passport control in an international airport because his name appeared under the status "to be stopped" in the database of the SBS.

40. The Court reiterates in this connection that the context in which action is taken is an important factor to be taken into account, since situations commonly occur in modern society where the public may be called on to endure restrictions on freedom of movement or liberty in the interests of the common good (see *Austin and Others*, cited above, § 59). An air traveller may be seen in this regard as consenting to a series of security checks by choosing to travel by plane (see *Gillan and Quinton*, cited above, § 64). In particular, these security checks may include having his identity papers checked or having his baggage searched, and also waiting for further enquiries to be carried out to establish his identity or determine that he does not represent a security risk for the flight.

41. The Court accepts in this respect that where a passenger has been stopped by border officials during border control in an airport in order to clarify his situation and where this detention has not exceeded the time strictly necessary to comply with relevant formalities, no issue arises under Article 5 of the Convention.

42. The Court will therefore examine the circumstances of the applicant's detention in order to determine whether in the present case the applicant's detention at Baku Heydar Aliyev Airport exceeded the time strictly necessary to comply with the formalities relevant for the clarification of his situation.

43. The Court observes that the applicant was stopped at 9.29 a.m. on 18 July 2006 during border control as his name appeared under the status "to be stopped" in the database of the SBS. The applicant was not allowed to leave the country and was taken to a room by SBS officers for further clarification of his situation. A record of the prevention of the applicant from crossing the State border was drawn up and his baggage was searched by SBS officers. He was not handcuffed or confined in a special detention facility, but it is undisputed by the parties that during his stay in the SBS room the applicant was not free to leave that room. It is also undisputed by the parties that the applicant's stay in the SBS room ended immediately following the clarification of his situation and he was then free to leave the airport. Even if the precise overall duration of the applicant's stay in the SBS room is not known, with the applicant maintaining that he had been detained for approximately four hours and the Government arguing that he had been kept there approximately only two hours, it could not have exceeded a few hours.

44. Even assuming that the applicant's version is correct, the Court finds that nothing proves that the applicant's stay in the SBS room exceeded the time strictly necessary for searching his baggage and complying with the relevant administrative formalities for the clarification of his situation. The Court notes in this connection that in the instant case the SBS officer reasonably believed when he stopped the applicant that there was a need to carry out further checks on the applicant's identity because – albeit as a result of an administrative error – the applicant's name appeared under the status “to be stopped” in the database of the SBS. It was established that the SBS detained the applicant only as long as was necessary to carry out a further check and that after the searches and the clarification of his situation he was free to leave the airport. In particular, it has not been shown that the applicant was forced to stay in the SBS room for a period of time exceeding what was strictly necessary to carry out the searches and comply with the relevant administrative formalities (see *Foka v. Turkey*, no. 28940/95, § 77, 24 June 2008).

45. The Court further notes that, unlike in the case of *Nolan and K. v. Russia*, where after the border officials had refused the applicant leave to enter Russian territory, the applicant was placed in a room in the transit zone of Sheremetyevo Airport where he spent the night (see *Nolan and K. v. Russia*, no. 2512/04, §§ 20-26, 12 February 2009), in the present case the applicant was free to leave the airport immediately after his situation had been clarified.

46. The Court thus finds that the applicant's detention in the SBS room following the border officials' refusal to allow him to leave the country did not amount to a deprivation of liberty within the meaning of Article 5 § 1 of the Convention.

47. It follows that this complaint is inadmissible under Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

## **B. The remainder of the application**

48. Relying on Articles 5, 6, 7 and 13 of the Convention the applicant submitted a number of other complaints related to the domestic proceedings following the incident of 18 July 2006 as well as to the first and second sets of proceedings mentioned above.

49. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

Søren Nielsen  
Registrar

Isabelle Berro-Lefèvre  
President