

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

FOURTH SECTION

DECISION

Application no. 24382/15
Firuze ASGAROVA and Albina VESELOVA
against Armenia

The European Court of Human Rights (Fourth Section), sitting on 12 September 2023 as a Chamber composed of:

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to the above application lodged on 15 May 2015,

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

Having regard to the comments submitted by the Azerbaijani Government, who had exercised their right to intervene in the case (Article 36 § 1 of the Convention and Rule 44 § 1 (b) of the Rules of Court),

Having regard to the decision of the Russian Government, who had been notified of their right to intervene in the proceedings, not to exercise their right in the present case,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Firuze Asgarova ("the first applicant") and Ms Albina Veselova ("the second applicant"), are Azerbaijani and Russian nationals respectively. The first applicant was born in 1967 and lives in the settlement of Chinarly, Shamkir District, Azerbaijan. The second applicant was born in 1982 and lives in the village of Garagaji, Tartar District, Azerbaijan. They were represented before the Court by Mr A. Baghirov, a lawyer practising in Baku.

2. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights.

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

A. Background information

4. The first applicant's long-term partner, Mr Dilgam Asgarov, and the second applicant's husband, Mr Shahbaz Guliyev, born in 1960 and 1968 respectively, are citizens of Azerbaijan. Mr Asgarov and Mr Guliyev will be hereinafter referred to as "the applicants' partners".

5. According to the applicants, their partners both originated from Kalbajar District, Azerbaijan. From 1993 until 2020 Kalbajar District – renamed Shahumyan Province – was under the effective control of the Republic of Armenia; it formed part of the territories surrounding the unrecognised "Nagorno-Karabakh Republic" ("NKR") (see *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 186, ECHR 2015).

6. Mr Asgarov and Mr Guliyev travelled to Kalbajar District on 29 June 2014, allegedly to visit their homeland and to pay their respects at the graves of their relatives.

B. Criminal proceedings against Mr Asgarov and Mr Guliyev

7. It can be seen from the security services report of 8 July 2014 and the decision of 9 July 2014 issued by an investigator at the National Security Service of the "NKR" that Mr Guliyev was arrested on 8 July 2014 on a livestock farm in Shahumyan Province. He was carrying an assault rifle with a silencer, a pistol with a silencer and ammunition.

8. It can be seen from the "NKR" security services' report of 14 July 2014 that Mr Asgarov was arrested on that day on the highway near the town of Karvachar. He was carrying arms and ammunitions.

9. According to the applicants, Mr Asgarov and Mr Guliyev were ill-treated upon arrest, both by Armenian and "NKR" officials.

10. On 9 July 2014 criminal proceedings were opened against Mr Guliyev on suspicion of his having committed an illegal border crossing.

11. On the same day Mr Guliyev lodged a handwritten request with the investigator that he be afforded the services of a Russian-language interpreter and that all the case documents be translated into Russian. The request, written in Russian, stated that Mr Guliyev was fluent in that language.

12. The investigator assigned a Russian-language interpreter to the case and granted Mr Guliyev free legal aid. The head of the Public Defenders' Office appointed I. as Mr Guliyev's lawyer.

13. On the same day the investigator ordered that Mr Guliyev be arrested. He then questioned Mr Guliyev, who stated to the investigator, *inter alia*, that he had been permanently living and working in Russia since 1988.

14. On 12 July 2014 the First-instance Court of General Jurisdiction of the "NKR" ordered that Mr Guliyev be held in detention for two months. Mr Guliyev's lawyer, I., stated that he had no objection to the detention order.

15. On 15 July 2014 an investigator at the National Security Service of the "NKR" ordered Mr Asgarov's arrest.

16. On the same day Mr Asgarov lodged a handwritten request with the investigator that he be afforded the services of a Russian-language interpreter and that all the case documents be translated into Russian. The request, written in Russian, stated that Mr Asgarov was fluent in that language. The case-file before the Court does not contain any indication as to the outcome of Mr Asgarov's request.

17. On the same day the investigator granted Mr Asgarov free legal aid. B. was appointed as Mr Asgarov's lawyer.

18. On 18 July 2014 a court ordered that Mr Asgarov be held in detention.

19. On 18 and 21 July 2014 Mr Guliyev and Mr Asgarov were charged with illegal border crossing, espionage, illegal possession of arms, theft, kidnapping and several counts of murder.

20. Mr Guliyev's and Mr Asgarov's detention was extended on 6 September 2014. According to the applicants, the two men were detained in inhuman conditions.

21. During the trial Mr Asgarov's defence lawyer B. told the press that there were discrepancies in Mr Asgarov's testimony and that a forensic examination had proved that one of the murder victims had been shot from Mr Asgarov's machine gun.

22. The applicants have submitted video footage with the intention of showing that during the trial the defence lawyers neither actively participated in the hearing nor advised the defendants.

23. On 29 December 2014 the First-instance Court of General Jurisdiction of the "NKR" convicted Mr Guliyev and Mr Asgarov as charged. Mr Asgarov was sentenced to life imprisonment and Mr Guliyev was sentenced to twenty-two years' imprisonment.

24. Both men lodged an appeal; on 10 March 2015 the Court of Appeal of the "NKR" upheld the first-instance judgment.

25. Both men lodged an appeal on points of law; on 27 May 2015 the Supreme Court of the "NKR" upheld the convictions.

26. On 19 January 2018 Mr Asgarov asked for the reappointment of B. as his legal-aid lawyer.

C. Contact with the outside world

1. The applicants' version

27. According to the applicants, their partners had been kept in strict isolation without contact with other inmates or news from the outside. Mr Asgarov and Mr Guliyev had not been allowed to send or receive mail, except during visits by the International Committee of the Red Cross ("the ICRC"), or to receive visits from their families or to contact independent lawyers. They also argued that visiting the detainees had been practically impossible. There had been "real, well-documented risks to their life in the 'NKR'". Anyone found on the territories would have been arrested and charged.

28. Mr Asgarov stated in his affidavit of 23 March 2021 that he had told the representative of the ICRC of his wish to lodge an application with the Court. Namely, he had expressed that wish at a meeting with the ICRC at which L.A., the Ombudsperson of the Republic of Armenia, had also been present. L.A. had tried to dissuade him from applying to the Court, asserting that his rights had not been violated. He had, however, filled in an application form. Following the prison officials' instructions, he had given it to his legal-aid lawyer, B. He had subsequently made enquiries about what had become of that form. He had been told by the prison officials that B. had sent his application to L.A., who had, however, refused to forward it to the Court. Mr Guliyev stated in his affidavit of 23 March 2021 that he had expressed to the prison officials his wish to lodge an application with the Court but that he had not been allowed to do so. Mr Asgarov and Mr Guliyev also claimed that all their letters to the ICRC and to their families had been censored and that some of them had not been sent.

2. The Government's version

29. The Government acknowledged that the two men had, as a security measure, been kept in isolation from other inmates and from each other. They had, however, had regular visits from their lawyers, and from doctors when necessary.

30. The Government initially submitted that there had been no restriction on the detainees' right to write and receive letters. However, it had not been possible for them to communicate by post, email or telephone because Azerbaijan had cut off all means of communication with the "NKR". They later stated that Mr Guliyev and Mr Asgarov had not been allowed to write or receive letters for fear that they might seek to take advantage of such communication to renew their connections with the Azerbaijani secret services.

31. Mr Asgarov and Mr Guliyev had been able to correspond with their families through letters forwarded by the ICRC. Those letters had not been

censored. In one of his letters forwarded by the ICRC (and submitted to the Court by the applicants), Mr Asgarov had asked his relatives to "submit a request to the Office of the UNHCR for a meeting".

32. According to information provided by the Ministry of Foreign Affairs of the "NKR", the applicants had never tried to visit the "NKR" or requested any assistance in organising meetings with their relatives. The Government emphasised the fact that the second applicant was a Russian national and had thus been able to visit the "NKR" without a visa or passport (merely using her internal Russian ID card) and to meet her husband if she had wished to do so.

33. Furthemore, Mr Asgarov and Mr Guliyev had been visited by representatives of human-rights NGOs on several occasions. Moreover, on 18 July 2017 they had been visited by members of an "International Working Group on Search for Missing Persons and Hostages" and had been able to talk confidentially to them.

34. Lastly, the Government submitted that at the time in question L.A. (see paragraph 28 above) had not been the Ombudsperson of the Republic of Armenia but the head of a human-rights NGO.

D. Mr Guliyev's and Mr Asgarov's release, and subsequent events

35. On 14 December 2020 the applicants' partners were released and returned to Azerbaijan.

36. On 23 March 2021 Mr Asgarov and Mr Guliyev sent affidavits to the Court in which they stated that they supported the application lodged by their partners on their behalf.

COMPLAINTS

37. The applicants complained under Articles 3, 5, 6, 7, 8, 13 and 14 of the Convention and Article 2 of Protocol No. 4 about the detention of, and the criminal proceedings against, their partners in the respondent State. In particular, they complained under Article 6 § 3 (c) and (e) that their partners' court-appointed lawyers had remained completely passive throughout the trial and had not provided effective legal assistance to their clients; they further complained that their partners had been provided with the services of an interpreter who had translated the proceedings into Russian, of which they had had an insufficient command. They also complained that the respondent State had hindered their partners' ability to exercise their right to individual petition under Article 34 of the Convention.

THE LAW

A. Submissions by the parties regarding the applicants' *locus standi* and the applicants' victim status

1. The Government

38. The Government submitted, firstly, that the applicants had not claimed to have been directly affected by the alleged violations of their partners' rights. Nor could they claim to have been indirect victims. Mr Asgarov and Mr Guliyev were alive. They were not missing persons, as the applicants had always known their whereabouts and had had contact with them through the ICRC. The Court's case-law regarding "indirect victims" was therefore not applicable to their situation.

39. The Government further maintained that the applicants had no standing to act on behalf of their partners in the proceedings before the Court. They noted that where applicants chose to be represented (as permitted by Rule 36 § 1 of the Rules of Court) they were required by Rule 45 § 3 to produce written authority for their nominated representatives to act on their behalf, duly signed. No such written authority was produced in the present case. The Government acknowledged – referring to the principles set out in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, ECHR 2014) – that special considerations might arise in the case of victims of alleged breaches of Articles 2, 3 or 8 of the Convention.

40. According to the Government the applicants had failed to submit any argument in support of their standing to act on their partners' behalf. In the Government's view, the applicants' partners had found themselves in a standard situation where a person had been convicted and was serving his sentence in a foreign country. The fact that the "NKR" was not recognised by Azerbaijan and that a state of war existed did not preclude the possibility of the applicants visiting their partners. In particular, the second applicant was Russian (see paragraph 1 above), which made visiting the "NKR" even easier (see paragraph 32 above). The "NKR" authorities should not be held liable for the applicants' own failure to take the necessary steps to visit their relatives (or at least to attempt to do so). The absence of any meetings between the applicants and their detained partners could therefore not be attributed to the "NKR" authorities.

41. Moreover, the men had not been in a particularly vulnerable situation: they had been no more vulnerable than any other person who had been convicted and sentenced for criminal offences. They had enjoyed the assistance of lawyers and interpreters (see paragraphs 12 and 17 above) and had regularly received and sent mail via the ICRC (see paragraphs 27 and 31 above). The Government therefore maintained that the two men could at any time have lodged applications with the Court or given instructions to their relatives to do so on their behalf.

42. Lastly, the Government argued that there was a conflict between the applicants' interests and their partners' interests. They referred to a letter written by Mr Asgarov to his relatives asking them to "submit a request to the Office of the UNHCR for a meeting" (see paragraph 31 above). Neither man had given any instruction to their relatives to lodge a case with the Court. The Government emphasised the fact that the applicants had not made a single attempt to seek information about their partners.

2. The applicants

43. The applicants confirmed that they had applied on behalf of their partners and submitted that, in the light of the exceptional circumstances of the case, they had the requisite standing. They acknowledged that in the event that an application was not lodged by a victim himself or herself, the Court generally required that written authority to act on behalf of that victim be produced. However, the applicants argued that special circumstances pertained in the present case. Contrary to the suggestion of the Government, the men had not been on trial in ordinary criminal proceedings. Rather, the victims had been forcefully taken hostage and were being kept in isolated detention by an illegal, unrecognised and armed entity lacking any legitimacy. Their health was deteriorating. That indicated their sensitive and vulnerable position.

44. The applicants argued that their partners had been kept in strict isolation with no contact with the outside world, had not been permitted to send or receive mail (except when receiving visits from ICRC representatives) and had had no right to contact independent lawyers or receive visits from their families. They had therefore been unable themselves to lodge an application with the Court or to authorise their relatives to do so on their behalf.

45. In the applicants' view, the criteria indicated in *Lambert and Others v. France* ([GC], no. 46043/14, ECHR 2015 (extracts)) were clearly met in the present case. Nothing suggested any conflict of interests between the direct victims and the applicants. On the contrary, the victims had wanted to use every opportunity to be freed and reunited with their families.

3. The third-party intervener

46. The Government of Azerbaijan submitted that it had been impossible for the applicants to visit their partners in the "NKR". Azerbaijan and Armenia had been *de facto* in a state of war. The applicants' partners had been detained on the territories occupied by Armenia. Travelling there would have incurred immense risk to the applicants' life and health. The Armenian Government themselves stated in their submissions to the Court that there had existed an "overall atmosphere of ethnic intolerance and negative attitude" between Azerbaijanis and Armenians.

B. The Court's assessment

47. It is not disputed by the parties that the applicants do not claim to be themselves victims of the alleged violations of the Convention. They lodged the present application on behalf of their partners, Mr Asgarov and Mr Guliyev – the direct victims of the alleged violations. They did not provide any written authority for them to act on the victims' behalf, but argued that exceptional circumstances justified their standing to lodge an application on behalf of their partners.

48. The Court reiterates that if an application is not lodged by the victim himself or herself, Rule 45 § 3 of the Rules of Court requires the production of a duly signed written authority to act. It is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim on whose behalf they purport to act before the Court. However, the Court has held that, in the case of victims of alleged breaches of Articles 2, 3 and 8 of the Convention at the hands of the national authorities, applications lodged by individuals on behalf of those victims – even if no valid form of authority has been presented – may be declared admissible. In such situations, particular consideration has been given to factors relating to the victims' vulnerability that rendered them unable to lodge a complaint with the Court; due regard has also been paid to any connections between the person lodging the application and the victim (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 149, 14 September 2022 and the authorities cited therein).

49. In sum, a third party may, in exceptional circumstances, act in the name and on behalf of a vulnerable person without a duly signed written authority to act where the following two main criteria are satisfied: the risk that the direct victim will be deprived of effective protection of his or her rights, and the absence of a conflict of interests between the victim and the applicant (see *Lambert and Others*, cited above, §102).

50. The Court has held that the list of factors capable of rendering a person vulnerable set out in *Lambert and Others* (cited above, § 92) – "on account of his or her age, sex or disability" – is not exhaustive. Individuals could be considered vulnerable on account of many other factors, such as the very

nature of the complaint lodged with the Court on their behalf (see *N. and M. v. Russia* (dec.), nos. 39496/14 and 39727/14, § 60, 26 April 2016). The applicants argued that their partners were vulnerable because they had been detained in complete isolation (see paragraphs 43 and 44 above). The Court accepts that a detainee held incommunicado may be regarded as a vulnerable person who is at risk of being deprived of the effective protection of his or her rights under the Convention.

51. However, despite restrictions on Mr Asgarov's and Mr Guliyev's contact with the outside world (which have been acknowledged by the respondent Government – see paragraphs 29 and 30 above), the Court is not convinced that the two men were detained in complete isolation. It is not disputed by the applicants that the ICRC had on several occasions visited their partners and forwarded letters from them to their families (see paragraph 27 above). It is important to note that, in one of his letters sent via the ICRC, which has been submitted to the Court by the applicants (see paragraph 31 above), Mr Asgarov asked his family to "submit a request to the Office of the UNHCR for a meeting". However, the applicants did not explain why their partners had never requested them to apply to the Court on their behalf.

52. Moreover, according to the Government's submissions, which are not disputed on this point by the applicants (see paragraph 33 above), on 18 July 2017 the two men were visited by representatives of International Working Group on Search for Missing Persons and Hostages, which consists of representatives of the civil society from several countries. However, the applicants have failed to substantiate why Mr Asgarov and Mr Guliyev had not given authority to apply to the Court to that organisation or asked them to pass on such authority to their families or to the lawyers of their choice.

53. Given those circumstances, the Court finds that the applicants have not convincingly shown that Mr Asgarov and Mr Guliyev did not have a real opportunity to appoint a representative, either by requesting (via one of the letters forwarded by the ICRC) the applicants to apply to the Court on their behalf or by signing an authority form enabling their relatives or the above-mentioned organisation to lodge an application with the Court during their meeting with that organisation on 18 July 2017.

54. Regard being had to the above, the Court discerns no exceptional circumstances in the present case that would allow the applicants to act in the name and on behalf of Mr Asgarov and Mr Guliyev without a duly signed written authority. It concludes that the applicants do not have standing to lodge the application in the name and on behalf of their partners.

55. It follows that the application is incompatible *ratione personae* with the provisions of the Convention, under Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 October 2023.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President