

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

FIRST SECTION

CASE OF ALIYEV v. AZERBAIJAN

(Application no. 22365/18)

JUDGMENT

STRASBOURG

11 July 2024

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



In the case of Aliyev v. Azerbaijan,

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

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 22365/18) 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 9 May 2018 by an Azerbaijani national, Mr Intigam Kamil oglu Aliyev (*İntiqam Kamil oğlu Əliyev* – "the applicant"), who was born in 1962, lives in Saray (Absheron Region) and was represented by Mr P. Leach, Ms J. Gavron and Ms R. Remezaite, lawyers based in the United Kingdom;

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 18 June 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the travel ban imposed on the applicant, a well-known human rights lawyer and civil-society activist, following his conditional release from prison.

2. On 22 April 2015 the applicant was convicted on multiple charges, including those of large-scale embezzlement and tax evasion, and sentenced to seven and a half years' imprisonment. That judgment was later upheld by the higher courts (for further details, see *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, 20 September 2018).

3. On 28 March 2016, following an application by the Prosecutor General concerning the severity of the applicant's sentence and the failure of the domestic courts to take into account his chronic health problems when delivering their judgments, the Plenum of the Supreme Court reduced the applicant's sentence to five years' imprisonment, suspended on probation. His release was subject to his not changing his permanent place of residence without notifying in advance the Sumgayit City Enforcement Department ("the SCED"), which had been appointed as the authority supervising his behaviour.

4. On 2 June 2016 the Sumgayit City Court granted a request by the applicant to leave Azerbaijan for ten days for a conference in Strasbourg and for undergoing medical examinations.

5. However, on 4 April 2017 the Sumgayit City Court dismissed another request by the applicant to leave the country for roughly three months for medical treatment, finding that the domestic law did not afford an individual serving a suspended sentence the right to apply for permission to leave the country.

6. The applicant appealed, arguing that the first-instance court had misapplied the domestic law. He also contended that the decision of the Plenum of the Supreme Court had not restricted his right to leave the country and that the imposition of a suspended sentence could not have automatically and unconditionally restricted his right to leave the country.

7. On 19 May 2017 the Sumgayit Court of Appeal dismissed the appeal. It found that although the first-instance court had misapplied the domestic law, the applicant's request could not have been granted as, according to the information provided by the SCED, he had not abided by the terms of his suspended sentence because he had failed to report to his probation officer on time. It also found that the applicant had failed to provide any evidence confirming his medical conditions.

8. On 31 October 2017 the Supreme Court upheld the appellate court's decision, reiterating its reasoning. The decision was served on the applicant on 13 November 2017.

9. The applicant complained under Article 2 of Protocol No. 4 to the Convention and Article 13 of the Convention that his right to leave Azerbaijan had been violated by the travel ban imposed on him and that he had no effective remedy at the domestic level in that respect. He also complained under Articles 8 and 10 of the Convention, and under Article 18 taken in conjunction with Article 2 of Protocol No. 4, that the imposition of the travel ban on him had violated his right to respect for private and family life and his freedom of expression, and that his Convention rights had been restricted for purposes other than those prescribed in the Convention.

THE COURT'S ASSESSMENT

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

10. On 19 November 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.

11. The applicant disagreed with the terms of the declaration, mainly arguing that it did not contain an undertaking to lift the travel ban imposed on him.

12. Having studied the terms of the Government's unilateral declaration and finding in particular that the declaration does not contain an undertaking to lift the travel ban imposed on the applicant, 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).

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

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

15. The Court further refers to the general principles established in its case-law and set out in *De Tommaso v. Italy* ([GC], no. 43395/09, §§ 104-05, 23 February 2017), which are equally pertinent to the present case.

16. The Court notes that the restriction on the applicant's right to leave Azerbaijan amounted to an interference within the meaning of Article 2 of Protocol No. 4. It must therefore be examined whether it was "in accordance with law", pursued one or more of the legitimate aims set out in Article 2 § 3 of Protocol No. 4 and was "necessary in a democratic society" to achieve such an aim.

17. The Court observes that the Plenum of the Supreme Court in its decision of 28 March 2016 imposed on the applicant the obligation not to change his permanent place of residence without notifying in advance the SCED, but did not impose any restriction on the applicant's right to leave the country. In that connection, while the Government asserted that Article 9.3.4 of the Migration Code, providing for a possibility to temporarily restrict the right of a person given a suspended sentence to leave the country, furnished a sufficient legal basis for the interference, the applicant contended that that Article merely provided for the possibility of restricting the right to travel abroad in certain situations – without defining the procedural and substantive conditions for its application – and therefore did not meet the "quality of law" requirements. However, in the particular circumstances of the present case, the Court does not find it necessary to determine whether the measure was "in accordance with law" as, for the reasons that follow, it considers that it was incompatible with Article 2 of Protocol No. 4 in other respects (see *Vlasov and Benyash v. Russia*, nos. 51279/09 and 32098/13, § 30, 20 September 2016).

18. The Court is prepared to accept that the measure, which seeks to restrict a convicted and not yet rehabilitated offender from travelling abroad,

pursues the legitimate aims of maintenance of public order and prevention of crime. The question arises whether the travel ban was "necessary in a democratic society" for achieving those aims (see *Kerimli v. Azerbaijan*, no. 3967/09, § 49, 16 July 2015).

19. In that connection, the Court reiterates that the mere fact that an individual has been criminally convicted and has not yet been rehabilitated cannot justify the imposition of restrictions on his or her freedom to leave his or her country (see *Nalbantski v. Bulgaria*, no. 30943/04, § 67, 10 February 2011).

20. In the instant case, the domestic courts failed to carry out the requisite assessment of the proportionality of the restriction of the applicant's right to travel abroad and to provide justification for it. In particular, they gave no explanation as to why they believed that the travel ban was conducive to the applicant's rehabilitation or why his absence on a trip abroad should have prevented him from complying with the obligation not to change his permanent place of residence without notifying the SCED in advance (compare *Vlasov and Benyash*, cited above, § 35).

21. Furthermore, although the domestic courts stated that the applicant had failed to provide any evidence confirming his medical conditions, the Court notes that his chronic health problems served as the main reason for the reduction of his sentence and were listed in the decision of the Plenum of the Supreme Court (see paragraph 3 above). The domestic courts also ignored the fact that the applicant had already been allowed to travel abroad without there having been any negative impact on the execution of his suspended sentence (see paragraph 4 above).

22. Therefore, the domestic courts did not make any genuine attempt to consider the specific reasons advanced by the applicant to justify the need to go abroad, or to assess whether the restriction on his right to leave Azerbaijan was a proportionate measure and whether it struck a fair balance between the public interest and the applicant's right to freedom of movement. Such a rigid and automatic approach cannot be reconciled with the obligation imposed by Article 2 of Protocol No. 4 to ensure that any interference with an individual's right to leave his or her country is, from the outset and throughout its duration, justified and proportionate in the light of the circumstances (see *Vlasov and Benyash*, cited above, § 36).

23. In the light of the foregoing, the Court does not consider that the automatic imposition of a travel ban without any regard to the individual circumstances of the applicant can be described as "necessary in a democratic society".

24. There has accordingly been a violation of Article 2 of Protocol No. 4 to the Convention.

III. REMAINING COMPLAINTS

25. As concerns the applicant's complaints under Articles 8, 10, 13 and 18 of the Convention (see paragraph 9 above), having regard to the facts of the case, the submissions of the parties, and its findings above (see paragraph 24 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 remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; compare also *Ganbarova and Others v. Azerbaijan* [Committee], nos. 1158/17 and 2 others, § 19, 21 September 2023).

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26. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage and EUR 13,002.78 in respect of costs and expenses incurred before the Court. He also argued that the most appropriate form of individual redress would be the lifting of the travel ban imposed on him and that, as a general measure, the domestic laws concerning travel bans should be amended in order to eliminate the vagueness in their wording.

27. The Government contested the amounts as excessive and unsubstantiated.

28. The Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

29. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 500 for the proceedings before it, plus any tax that may be chargeable to the applicant, to be paid directly to the bank account of the applicant's representatives.

30. Moreover, in the particular circumstances of the present case, the Court does not consider it appropriate to indicate the need for any general or individual measures in respect of Azerbaijan (see *Emin Huseynov v. Azerbaijan (no. 2)*, no. 1/16, § 81, 13 July 2023).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the application out of the list on the basis of a unilateral declaration;

2. *Declares* the complaint concerning Article 2 of Protocol No. 4 to the Convention admissible;

3. *Holds* that there has been a violation of Article 2 of Protocol No. 4 to the Convention;

4. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) EUR 3,000 (three thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to the bank account of the applicant's representatives;

(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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President