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

FIFTH SECTION

DECISION

Application no. 47147/14
Mammad GURBANOV and Nadir MAMMADOV
against Azerbaijan

The European Court of Human Rights (Fifth Section), sitting on 3 December 2020 as a Committee composed of:

Lado Chanturia, *President,*
Latif Hüseynov,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to the above application lodged on 17 June 2014,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants were born in 1953 and 1980 respectively and live in Nakhchivan. They were represented by Mr K. Bagirov, a lawyer based in Azerbaijan.

2. The Government were represented by their Agent, Mr. Ç. Əsgərov.

The circumstances of the case

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

4. On 10 December 2012 criminal proceedings were instituted against the applicants, who were accused of hooliganism aggravated by being committed in group with application of item used as a weapon, and violent resistance to a person in authority. In particular, the applicants were accused of insulting and injuring customs officers during the customs clearance of some goods imported by the applicants from Turkey.

5. On 18 January 2013 the applicants' case was sent for trial to the Sadarak District Court.

6. The trial commenced on 1 February 2013 and the applicants' lawyer requested that the applicants be removed from the metal cage in the courtroom, where they had been placed, and be seated near him. After hearing the other parties' observations, the court rejected the request in question.

7. At the next hearing held on 12 February 2013 the applicants lodged an objection against their lawyer due to his inefficiency and requested the court to suspend his participation in the hearing. The judge dismissed their request, holding that the applicants had not submitted any contract for legal services other than with their present lawyer and that the interests of justice required the continuation of the proceedings with the participation of the defence lawyer. In response, the applicants refused to participate in any further examination of their case. According to the transcript of the hearing the applicants and their lawyer were present at the hearing. While the applicants had refused to answer any question addressed to them, their lawyer on a few occasions had intervened with the questioning of the witnesses.

8. On 13 February 2013 the Sadarak District Court convicted the applicants as charged and sentenced the first applicant to four years' imprisonment and the second applicant to five years' imprisonment.

9. The applicants lodged an appeal with the Supreme Court of the Nakhchivan Autonomous Republic. They complained in summary fashion that by placing them in a metal cage the trial court had violated their right to effectively defend themselves in person or through legal assistance.

10. On 26 April 2014 the Supreme Court of the Nakhchivan Autonomous Republic, acting as an appellate court, upheld the appeal in part and amended the Sadarak District Court's judgment by conditionally suspending the applicants' sentences for two years and three years respectively. The court found that the applicants had failed to substantiate their complaint and that it had not been supported by the material in the case file. According to the transcript of the hearing, the applicants' lawyer informed the court by telegram that the applicants had not contracted him for their defence before the appellate court, and had asked the court to continue the examination of the appeal without his participation. The court had provided the applicants with State-funded lawyers but by written request they had decided to reject the assistance of these lawyers, and to conduct their own defence. Both applicants then admitted to committing the crimes they had been charged with, and expressed their regret to the victims in written submissions.

11. The applicants lodged a cassation appeal, essentially reiterating the arguments which they had made before the appellate court.

12. On 13 January 2015 the Supreme Court dismissed the applicants' appeal and upheld the decision of the appellate court. The Supreme Court remained silent in respect of the applicants' complaint concerning the violation of their right to effectively defend themselves in person or through

legal assistance in relation to their confinement in a metal cage during the trial. According to the transcript of the hearing, the applicants were not present at the hearing but their lawyer of their own choosing, the same as in the proceedings before the first-instance court, had not objected to the examination being carried out in their absence.

COMPLAINTS

13. The applicants complained under Article 6 §§ 1 and 3 (c) of the Convention that their confinement in a metal cage during the trial had infringed their right to effectively defend themselves in person or through legal assistance.

THE LAW

14. The Government submitted that the applicants failed to demonstrate that they had been restricted in some way in privately communicating with their lawyer. Moreover, they had not availed themselves of the right to raise this issue at any time during the trial. Furthermore, in the Government's view, the applicants' decision to conduct their own defence in the proceedings before the appellate court, and their absence in the proceedings before the cassation court, to which their lawyer had raised no objection, clearly indicated that lengthy discussions between the applicants and their lawyer had not been necessary. The Government therefore submitted that in the circumstances of the present case the applicants' defence rights could not be considered to have been restricted to such an extent as to render their legal defence ineffective, and that the complaint was manifestly ill-founded.

15. The applicants maintained their complaint.

16. The Court observes that the applicants did not specify the particular way in which their confinement in a metal cage during the trial had impeded their communication with their lawyer. Their submissions in this respect were couched in very general terms. In particular, they did not provide any details about how the cage had been placed in relation to the position of the lawyer, or whether communication between them through the metal bars of the cage had been restricted in any way (see *Karpyuk and Others v. Ukraine*, nos. 30582/04 and 32152/04, § 161, 6 October 2015, and contrast *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 646, 25 July 2013).

17. As to the applicants' complaint concerning the alleged infringement of their right to defence in person, the Court notes that they have not specified, and it does not follow from the available material, what specific elements of their defence were hindered in the circumstances of the case. It is also noted that they chose not to retain their lawyer at the trial and completely refused to participate in the examination of their case (see paragraph 7 above). Moreover, in their statement of appeal the applicants merely mentioned that

they had difficulties in exercising their right to effectively defend themselves in person without providing any substantiation in that regard (see paragraph 9 above). Furthermore, they did not allege that their placement in a metal cage had continued during the proceedings before the Supreme Court of the Nakhchivan Autonomous Republic.

18. In these circumstances, the Court is not in a position to consider that applicants' defence rights during the trial, as guaranteed by Article 6 §§ 1 and 3 (c) of the Convention, were violated. It follows that this complaint is manifestly ill-founded and that the application must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 January 2021.

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Martina Keller Deputy Registrar	Lado Chanturia President