

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

FIFTH SECTION

DECISION

Application no. 19657/18
M.J.
against Azerbaijan

The European Court of Human Rights (Fifth Section), sitting on 22 February 2024 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Mattias Guyomar*, judges*,
and Sophie Piquet, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 19657/18) 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 24 May 2018 by a Turkish national, Mr M. J. ("the applicant"), who was born in 1974;

the decision of the President of the Section to give Ms A. Nasirli leave to represent the applicant in the proceedings before the Court (Rule 36 § 4 (a) *in fine* of the Rules of Court);

the decision to give notice of the complaints concerning Articles 3, 5 § 1 (f) and 13 of the Convention to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov, and to declare the remainder of the application inadmissible;

the decision to grant the applicant anonymity under the terms of Rule 47 § 4 and Rule 33 § 2 of the Rules of Court;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the arrest of the applicant in Azerbaijan and his extradition to Türkiye on account of his alleged association with the attempted *coup d'état* of 2016.

2. The applicant lived in Georgia between 2013 and 2017 for professional reasons. On 20 April 2017, after being informed that allegations against him were being investigated in Türkiye, the applicant obtained a fake passport and tried to cross the border into Azerbaijan. He was arrested and on 8 May 2018 he was sentenced to one year's imprisonment for entering the country illegally.

3. On 26 April 2018 in another set of proceedings related to an extradition request made by Türkiye, the Baku Court of Serious Crimes refused to extradite the applicant.

4. On the same day, the applicant was arrested and taken to the temporary detention facility of the Organised Crime Department of the Ministry of Internal Affairs. The State Migration Service decided to expel the applicant to Türkiye pursuant to Articles 79.1.3 and 79.5.1 of the Migration Code pertaining to the expulsion of foreigners released from prison. The next day, on 27 April 2018, the applicant was expelled.

5. On 26 June 2019, the United Nations Human Rights Council's Working Group on Arbitrary Detention ("WGAD") concluded in its *Opinion No. 10/2019 concerning Mustafa Ceyhan (Azerbaijan and Turkey)* that there had been violations of the applicant's right to protection from torture and ill-treatment, by a failure to examine whether the applicant would be in danger of being subjected to such treatment if returned; right to protection from arbitrary arrest and detention; right to be brought before a court; right to challenge the lawfulness of his detention; and his right to a fair trial.

6. The WGAD referred to Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, Articles 6, 8, 9 and 10 of the Universal Declaration of Human Rights, and Articles 2, 7, 9, 13, 14, 16 and 26 of the International Covenant on Civil and Political Rights (paragraphs 64-79 of its *Opinion*)[1].

7. Before the Court, the applicant complained that his forcible removal to Türkiye had been in breach of Article 3 of the Convention, given the risk of ill-treatment he would run there because of the overcrowding in the prisons. He also complained under Article 5 § 1 (f) and Article 13 of the Convention that there had been no effective remedy available by which he could have challenged the lawfulness of his detention and expulsion.

8. The Government contended that the same facts and complaints had been examined by the WGAD and invited the Court to declare the case inadmissible pursuant to Article 35 § 2 (b) of the Convention.

THE COURT'S ASSESSMENT

9. Article 35 § 2 (b) of the Convention is intended to avoid a situation where several international bodies deal simultaneously with applications

[1] A/HRC/WGAD/2019/10 (undocs.org)

which are substantially the same. The assessment of whether cases are similar would usually involve comparing the parties in the respective proceedings, the legal provisions relied on by them, the scope of their claims and the types of redress sought (see, among others, *Gürdeniz v. Turkey* (dec.), no. 59715/10, § 41, 18 March 2014).

10. The Court has already concluded that a procedure before the WGAD constitutes "another procedure of international investigation or settlement" for the purposes of Article 35 § 2 (b) of the Convention (see *Peraldi v. France* (dec.), no. 2096/05, 7 April 2009; *Gürdeniz*, cited above, § 39). It sees no reason to depart from that conclusion in the present case.

11. The Court notes that the WGAD's Opinion of 26 June 2019 established that there had been violations of the applicant's right to protection from torture and ill-treatment because of the failure to examine whether he would be in danger of being subjected to such treatment if returned; his right to protection from arbitrary arrest and detention; his rights to be brought before a court and to challenge the lawfulness of his detention; and his right to a fair trial.

12. In these circumstances, the Court considers that the applicant's complaints under Articles 3, 5 § 1 (f) and 13 of the Convention are substantially the same as the matter submitted to the WGAD and dealt with in its Opinion of 26 June 2019.

13. Consequently, the present application must be rejected in accordance with Article 35 § 2 (b) of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 March 2024.

Sophie Piquet Acting Deputy Registrar	Stéphanie Mourou-Vikström President