



Student's arrest and detention for allegedly filming a dance and uploading it to the Internet was not lawful

In today's **Chamber judgment**¹ in the case of **Rustamzade v. Azerbaijan** (application no. 38239/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.

The case concerned a student's arrest and detention in 2013 for allegedly filming some friends dancing in a park and uploading the video of it to YouTube. He was charged with hooliganism and spent one year in pre-trial detention. He was convicted in 2014 as charged, as well as of mass disorder and arms offences which had in the meantime been added to the list of charges, and sentenced to eight years' imprisonment.

The Court found in particular that the facts relied on in the domestic proceedings could not reasonably be considered to constitute criminal behaviour as defined under domestic law or as interpreted by the higher courts. Mr Rustamzade had therefore been arrested and detained without a reasonable suspicion that he had committed a criminal offence.

Principal facts

The applicant, Ilkin Bakir oglu Rustamzade, is an Azerbaijani national who was born in 1992 and lives in Baku (Azerbaijan).

In the first few months of 2013 Mr Rustamzade, an economics student and civil society activist, actively participated in a number of demonstrations held in Baku criticising the government for deaths of soldiers in the army.

Against that background, on 1 March 2013 he allegedly made a video recording of friends performing what had become a popular dance at the time in Azerbaijan, the "Harlem Shake". The video, later uploaded to YouTube, shows seven people dancing in a park, one of whom makes sexually suggestive movements near a bronze statue.

Mr Rustamzade was arrested and charged in May 2013 with hooliganism. He was accused of a "manifest disrespect towards society" and breaching public order by making the video recording and uploading it to the Internet. He denied the charges against him.

At the prosecuting authorities' request, the court ordered his detention pending trial for two months on the ground that there was a risk of his absconding and reoffending. Despite his repeated appeals, the courts extended his detention until his conviction in May 2014 of hooliganism as well as of a number of other criminal offences which had in the meantime been added to the list of charges, including mass disorder and various arms offences. He was sentenced to eight years' imprisonment.

A separate application (no. 22323/16) concerning the criminal proceedings against Mr Rustamzade is still ongoing before the European Court.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying in particular on Article 5 §§ 1 and 3 (right to liberty and security), Mr Rustamzade complained that he had been arrested and detained without a reasonable suspicion that he had committed a criminal offence and that the courts had failed to justify his pre-trial detention.

The application was lodged with the European Court of Human Rights on 20 June 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
André **Potocki** (France),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Mr Rustamzade maintained that the accusations against him had been groundless, submitting that even the video recording of the dance had not been available in the case file examined by the courts when they had ordered and extended his detention.

The Court noted that the Government had not specified whether the material in the case file against the applicant had contained witness statements, facts or evidence that would satisfy the objective observer that he had committed a criminal offence.

In any case, it was not at all clear from the decisions of the prosecuting authorities and the domestic courts how the video recording of a dance and its subsequent uploading to YouTube could be considered a grave breach of public order, which constituted one of the elements of the criminal offence of hooliganism under domestic law.

Nor had it been argued in the proceedings that the applicant's filming of the dance had been accompanied by violence or destruction / damage of others' property, another constituent element of hooliganism as defined in the Criminal Code.

Both the Plenum of the Supreme Court and the Constitutional Court had confirmed this interpretation of the domestic law in decisions concerning hooliganism.

The Court therefore concluded that the facts relied on could not reasonably be considered to constitute criminal behaviour as defined under domestic law or as interpreted by the higher courts.

Mr Rustamzade's pre-trial detention had not therefore constituted "lawful detention" effected "on reasonable suspicion" of his having committed an offence, in violation of Article 5 § 1.

Given that finding, the Court held that there was no need to examine separately the complaint under Article 5 § 3 about the reasons for his continued pre-trial detention.

[Just satisfaction \(Article 41\)](#)

The Court held that Azerbaijan was to pay Mr Rustamzade 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.