



## Freezing of bank accounts and travel bans were intended to paralyse an NGO's human-rights work in Azerbaijan

The case [Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan](#) (application nos. 74288/14 and 64568/16) concerned judicial orders against the applicants, a human-rights non-governmental organisation and its chairman, pending the investigation into a criminal case brought against a number of NGOs in 2014 for alleged financial irregularities.

In today's **Chamber** judgment<sup>1</sup> in the case the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights in respect of both applicants as concerned the freezing of their bank accounts,

**a violation of Article 13 (right to an effective remedy) in conjunction with Article 1 of Protocol No. 1** to the European Convention in respect of both applicants,

**two violations of Article 2 of Protocol No. 4 (freedom of movement)** to the Convention on account of travel bans imposed on Mr Mustafayev by the prosecuting authorities and by the domestic courts,

**a violation of Article 18 (limitation on use of restrictions on rights)** taken in conjunction with Article 1 of Protocol No. 1 in respect of both applicants and in conjunction with Article 2 of Protocol No. 4 in respect of Mr Mustafayev.

The Court noted that neither applicant had been named in the criminal proceedings against the NGOs. It therefore found that the freezing of the applicants' bank accounts and the prosecuting authorities' imposition of a travel ban on Mr Mustafayev had been unlawful. The domestic courts imposing another travel ban on Mr Mustafayev had, on the other hand, been in accordance with domestic law but had not pursued any legitimate aim.

It considered that such restrictions on the applicants' rights had been to punish them for their work in the area of human rights and to prevent them from continuing their activities.

Under **Article 46 (binding force and enforcement)** it decided that the Committee of Ministers, the executive arm of the Council of Europe, was best placed to assess and supervise the measures necessary to remove any impediment to the applicants' exercise of their activities.

### Principal facts

The first applicant is Democracy and Human Rights Resource Centre, a non-governmental organisation specialising in legal education and protection of human rights. The second applicant, Asabali Gurban oglu Mustafayev, an Azerbaijani national, is a lawyer and member of the Azerbaijani Bar Association. He is also the founder and chairman of the first applicant.

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](http://www.coe.int/t/dghl/monitoring/execution).

In 2014 the Prosecutor General's Office opened a criminal case in connection with alleged financial irregularities in the activities of a number of non-governmental organisations. The applicants were not named in the proceedings, but Mr Mustafayev was questioned on several occasions between 2014 and 2016.

The Nasimi District Court issued a judicial order in May 2014 against the applicant association in respect of all of its bank accounts pending the investigation. It referred to 11,993 US dollars received by the NGO from the United States of America's National Endowment for Democracy as constituting the object of a criminal offence. Mr Mustafayev found out about the order in July 2014 when going to the local branch of his bank. All his appeals were however dismissed for missing the three-day deadline.

Mr Mustafayev discovered in December 2014 that his personal bank accounts had also been frozen pending the investigation. The judicial order was based on Mr Mustafayev, who is a legal representative before the European Court in a large number of cases, having received 850 euros from the Council of Europe by way of legal aid.

Mr Mustafayev also had two travel bans imposed on him by the prosecuting authorities and by the domestic courts .

He found out about the first, imposed by the prosecuting authorities, when he was stopped from taking a plane from Baku to Tbilisi in September 2015. The restriction was lifted in July 2019.

The second was imposed in proceedings against the applicant association for recovery of a tax debt. Mr Mustafayev argued that there was no reason for restricting his right to leave the country as there was enough money in the association's bank accounts to pay the tax debt. All his appeals were unsuccessful and the travel ban still stands.

## Complaints, procedure and composition of the Court

Both applicants complained under Article 1 of Protocol No. 1 (protection of property) and Article 13 (right to an effective remedy) about the freezing of their bank accounts, while Mr Mustafayev complained under Article 2 of Protocol No. 4 (freedom of movement) about the travel bans imposed on him by the prosecuting authorities and by the domestic courts.

The applicants also alleged that those measures had been politically motivated. According to them, the restrictions had been part of a targeted repressive campaign against human-rights defenders and NGO activists in Azerbaijan, and had been intended to paralyse their work, in breach of Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4.

The applications were lodged with the European Court of Human Rights on 26 November 2014 and 31 October 2016, respectively.

The Open Society Justice Initiative and the International Commission of Jurists were granted leave to intervene as third parties.

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

Síofra O'Leary (Ireland), *President*,  
 Ganna Yudkivska (Ukraine),  
 Stéphanie Mourou-Vikström (Monaco),  
 Lətif Hüseynov (Azerbaijan),  
 Jovan Ilievski (North Macedonia),  
 Arnfinn Bårdsen (Norway),  
 Mattias Guyomar (France),

and also Martina Keller, Deputy Section Registrar.

## Decision of the Court

### Article 1 of Protocol No. 1 (protection of property)

The Court concluded that the applicants had not belonged to any of the categories of persons to whom the measure of freezing a bank account could be applied under the domestic law.

In particular the applicants had not been charged with any criminal offence within the framework of the criminal case against the NGOs or in other proceedings. It was undisputed by the parties that Mr Mustafayev had not been formally accused of any crime, but had only been questioned on several occasions. Moreover, the courts had not even referred to any legal provision as a basis for its order freezing the applicant's account.

The interference with the applicants' rights could thus not be considered lawful within the meaning of Article 1 of Protocol No. 1.

### Article 13 (right to an effective remedy) in conjunction with Article 1 of Protocol No. 1

The Court noted that the domestic authorities had failed to provide the applicants with a copy of the relevant judicial orders. That had deprived them of their right to challenge those orders before the courts.

The Government had also failed to show in their submissions that there had been any other remedy by which the applicants could have challenged the orders and the continuation of the restrictions imposed on them.

The Court concluded that the applicants had not in practice had an effective remedy for their complaint under Article 1 of Protocol No. 1.

### Article 2 of Protocol No. 4 (freedom of movement)

As concerned the travel ban imposed on Mr Mustafayev by the prosecuting authorities, the Court referred to a previous case in which it had examined an identical complaint based on the same facts. In that case it found that the ban imposed on the applicants, who had only been witnesses in criminal proceedings, in the absence of any judicial decision had not been "in accordance with the law". The Court considered that that finding applied in the applicant's case and accordingly held that there had been a violation of his right to leave his own country.

The travel ban aimed at securing payment of taxes could on the other hand be imposed in accordance with the domestic law, the Migration Code and the Code of Criminal Procedure.

However, neither the tax authorities nor the domestic authorities had considered any alternative to the travel ban, such as deducting the alleged tax debt from the applicants' bank accounts or seizing assets, despite Mr Mustafayev's explicit request. Nor had it been argued how the imposition of the travel ban had been necessary for the collection of the debt.

The Court therefore concluded that the interference with Mr Mustafayev's right to leave his country had not pursued any legitimate aim, in violation of Article 2 of Protocol No. 4.

### Article 18

The Court considered that there had been an ulterior purpose for the restrictions on the applicants' rights, namely to punish them for their work in the area of human rights and to prevent them from continuing those activities.

The Court was particularly concerned by the fact that Mr Mustafayev had had his bank account frozen because of a transfer of money for legal aid in proceedings before it.

The Court considered the applicants' situation against the backdrop of a series of cases it had already decided concerning a pattern of arbitrary arrests and detention of government critics, civil-society activists and human-rights defenders in Azerbaijan. Various human-rights organisations have also reported on the freezing of bank accounts and travel bans against civil-society activists in the country.

There had therefore been a violation of Article 18 taken in conjunction with Article 1 of Protocol No. 1 in respect of both applicants and in conjunction with Article 2 of Protocol No. 4 in respect of Mr Mustafayev.

#### Article 46 (enforcement)

The Court decided that the Committee of Ministers of the Council of Europe was best placed to assess and supervise specific measures for the protection of civil-society activists and human-rights defenders in Azerbaijan and for the removal of any impediment to the exercise of their activities.

#### Article 41 (just satisfaction)

The Court held that Azerbaijan was to pay 8,000 euros (EUR) to the applicant association and EUR 15,000 to Mr Mustafayev in respect of pecuniary damage and non-pecuniary damage. EUR 1,900 was awarded 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.