



Detention and deportation of Turkish citizens from Azerbaijan had been “extrajudicial rendition”

In today’s **Chamber** judgment¹ in the case of [Shenturk and Others v. Azerbaijan](#) (application no. 41326/17) 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, and

a violation of Article 3 (prohibition of inhuman or degrading treatment).

The case concerned the arrest, detention and expulsion of the applicants from Azerbaijan to Turkey. All four had worked in Azerbaijan as teachers in private schools associated with the Gülen movement.

The Court found in particular that the removal of the applicants had been a disguised extradition and their deprivation of liberty had been part of an extra-legal transfer in contravention of domestic and international law, noting how the authorities had circumvented formal extradition proceedings and relevant international safeguards, violating their Article 5 and Article 3 rights.

Principal facts

The applicants, Taci Shenturk, Isa Ozdemir, Ayhan Seferoglu and Erdogan Taylan, are Turkish nationals who were born between 1971 and 1976 and are currently in custody in Turkey.

The four applicants came to Azerbaijan between 1992-95, or on an unspecified date in the case of Mr Shenturk. All four regularised their residence statuses there, ultimately going to work in Gülenist schools or other companies associated with the Gülen movement.

In 2017 the Turkish authorities informed their Azerbaijani counterparts that Mr Shenturk’s passport had been cancelled, requesting his arrest and deportation. Also in 2017, Mr Ozdemir, Mr Taylan and Mr Seferoglu were separately informed while on trips to Georgia of travel bans imposed on them.

All four were separately arrested and taken into custody. In the cases of the latter three applicants, their residence permits were ultimately revoked as part of the proceedings.

In 2017 and 2018 the United Nations High Commissioner for Refugees (UNHCR) issued protection letters in respect of Mr Shenturk and his family and Mr Ozdemir. The UNHCR later intervened and prevented Mr Shenturk’s deportation initially.

None of the four successfully received asylum in Azerbaijan. The Government denied Mr Shenturk had ever applied for asylum in Azerbaijan.

On 8 June 2017 without informing his family or the UNHCR, the Azerbaijani authorities deported Mr Shenturk to Turkey. No formal proceedings had been commenced.

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.

Proceedings were opened in respect of Mr Ozdemir, Mr Seferoglu and Mr Taylan in 2018 and their detention ordered. However, Mr Ozdemir's release and non-extradition was later separately ordered by the courts. All three were deported by the State Migration Service despite that order and despite the ongoing proceedings in the other two cases. The Government stated the deportations had been carried out owing to a lack of a residence permit in accordance with the law, in particular Article 79.1.1 of the Migration Code.

All four applicants were arrested and taken into custody for alleged involvement in the so-called Fetullahist Terrorist Organisation / Parallel State Structure following their arrival in Turkey.

Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (right to liberty and security) and § 4 (right to have lawfulness of detention decided speedily by a court), Article 3 (prohibition of inhuman and degrading treatment), and Article 13 (right to an effective remedy), the applicants complained, in particular, that their detention had been unlawful, that their removal to Turkey had exposed them to a real risk of ill-treatment, and of a lack of an effective remedy for their complaints. The first applicant also relied on Article 1 of Protocol No. 7 to the Convention (procedural safeguards with regard to expulsion of aliens).

The application was lodged with the European Court of Human Rights on 9 June 2017.

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

Síofra O'Leary (Ireland), *President*,
Mārtiņš Mits (Latvia),
Lətif Hüseynov (Azerbaijan),
Lado Chanturia (Georgia),
Ivana Jelić (Montenegro),
Arnfinn Bårdsen (Norway),
Mattias Guyomar (France),

and also Victor Soloveyitchik, *Section Registrar*.

Decision of the Court

Article 5 § 1

The applicants alleged that their detention and deportation to Turkey had not followed standard extradition proceedings, had not been in accordance with domestic law, and had amounted to extrajudicial rendition. The Court reiterated that Article 5 protects people against arbitrary detention, and sets out the circumstances in which an individual can be detained.

The Court observed that they had all been detained on the basis of arrest warrants issued in Turkey and that the first applicant had been arrested, detained and deported without any formal decision having been taken. Concerning the other applicants, they had not been released pending processing of their cases, as per court orders, but had been instead handed over to State Migration Service officers.

The Court held that their removal to Turkey had been in circumvention of formal extradition proceedings and of the relevant international safeguards. In particular it highlighted that the first applicant had been removed from Azerbaijan in the absence of any formal extradition proceedings; that the other applicants had not been able to benefit from the protection afforded by such proceedings; that the third and fourth applicants had been removed to Turkey while their extradition proceedings had been still pending; and that the second applicant had been removed to Turkey despite a court order that he should not be extradited.

Overall, the Court held that the removal of the applicants had been a disguised extradition and their deprivation of liberty had been part of an extra-legal transfer in contravention of domestic and international law.

There had been a violation of Article 5 § 1 of the Convention.

Article 3

The Court emphasised it did not itself examine actual asylum applications or verify how the States honour their obligations under the Geneva Convention. Its main concern was whether there were effective protections against arbitrary forcible return (*refoulement*) to the country from which an individual had fled. It noted that the applicants had all applied for asylum in Azerbaijan.

Referring to its findings that the applicants had been transferred extra-legally to Turkey and that the risk of ill-treatment was not examined, the Court adjudged that they had been denied protections against arbitrary *refoulement*, leading to a violation of Article 3.

Other articles

Given its above findings, the Court held that it was not necessary to examine the complaints under Article 5 § 4, Article 13 and Article 1 of Protocol No. 7.

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay the applicants 9,000 euros (EUR) each in respect of non-pecuniary damage.

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.