



Businessman detained for too long awaiting trial and his assets blocked unlawfully

In today's Chamber judgment in the case **Rafig Aliyev v. Azerbaijan** (application no. 45875/06), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

Violation of Article 5 §§ 3, 4 and of Article 1 of Protocol No 1 (protection of property) of the European Convention on Human Rights.

The case concerned the detention in 2005 of a well-known Azerbaijani businessman, brother of an ex-Minister for Economic Development, on suspicion of illegal smuggling and his related complaints.

Principal facts

The applicant, Rafig Shovlet Oglu Aliyev, is an Azerbaijani national who was born in 1967 and lives in Baku (Azerbaijan).

He was the chief executive officer of various subsidiaries of one of Azerbaijan's largest private companies, Azpetrol.

Mr Aliyev was arrested at Baku International Airport on 19 October 2005 on suspicion of carrying 30,000 undeclared US dollars. The following day a judge ordered his detention. Several new criminal charges were brought against him subsequently, including for embezzlement, tax evasion and smuggling of large quantities of petroleum, and organising a massive unrest and a coup d'état after the parliamentary elections of 6 November 2005.

On the day of Mr Aliyev's arrest, one of his brothers, Farhad Aliyev, who was the then Minister for Economic Development, was arrested on suspicion of organising a coup d'état. According to Mr Rafig Aliyev, his other brothers were either dismissed from their jobs or arrested.

According to Mr Rafig Aliyev, on the day of his arrest, officials from the Ministry of Taxes and the Ministry of National Security seized large sums of money from his company's cash register and many valuable personal and family items from his home.

During the two days following Mr Rafig Aliyev's arrest, two press releases were issued on behalf of the Prosecutor General and the Ministers for National Security and Internal Affairs, officially informing people about the arrest and accusations against several well-known current and former State-officials, including Mr Rafig Aliyev's brother. Those press

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

releases provided a summary of the evidence gathered about the alleged plan to forcibly capture power.

Mr Rafiq Aliyev's pre-trial detention was extended repeatedly and his requests for release were systematically denied.

On 8 June 2006, the court attached a great number of shares which Mr Aliyev owned in the Bank of Baku upon the request of the prosecutor who believed that Mr Aliyev had committed a number of economic criminal offences, including smuggling of large quantities of petroleum products out of the country, and subsequently acquired those bank shares using the proceeds of those criminal offences. At the time of delivery of the attachment order, the applicant was not yet charged with the offences of petroleum smuggling, tax evasion or embezzlement.

Mr Rafiq Aliyev was convicted in October 2007 on most counts and sentenced to nine years' imprisonment. He alleged that his arrest, detention and conviction were part of a persecution campaign against him and his family following the arrest of his ex-Minister brother who was suspected of organising a coup d'état.

Complaints, procedure and composition of the Court

Mr Rafiq Aliyev complained in particular that: his arrest and detention were unlawful, alleging that the dollars found on him had been planted in his bag at the airport; his ensuing pre-trial detention, extended for more than two years without adequate justification, was excessive; and, that the related judicial proceedings were unfair. He relied in particular on Article 5 §§ 1, 3 and 4 (right to liberty and security). Lastly, he complained, under Article 1 of Protocol No. 1, about the seizure of a number of valuable personal items during the searches of his apartment and offices in the context of the criminal proceedings against him as well as about the authorities' decision to attach his assets (namely shares in the Bank of Baku).

The application was lodged with the European Court of Human Rights on 13 November 2006.

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

Nina **Vajić** (Croatia), *President*,
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway), *Judges*,

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

Length of pre-trial detention (Article 5 § 3)

The period which Mr Aliyev had spent in pre-trial detention had lasted two years and six days in total. Even if the initial reasonable suspicion had initially sufficed to justify his detention, as time passed other relevant reasons should have been put forward by the authorities who should have considered his personal situation.

The first-instance court decisions had each time referred to the gravity of the offences of which Mr Aliyev was suspected and to his likely absconding. While those were two of the relevant elements to be considered by the courts in assessing the need for someone's continued detention awaiting trial and judgment, they were not sufficient by themselves. The courts had not examined Mr Aliyev's personal circumstances and how those might have evolved over time. Instead, they had used a stereotyped formula and had not verified whether the initial grounds on which they had based their detention decisions had remained valid during the proceedings.

As to the Assize Court's decision prolonging Mr Aliyev's detention, it had been taken in respect of several suspects collectively. Therefore, the Assize Court had failed to assess the situation on a case-by-case basis and to give individual reasons in respect of each of the detainees; that was incompatible with the guarantees of Article 5 § 3.

Consequently, the Court concluded that there had been a violation of Article 5 § 3.

Review of pre-trial detention (Article 5 § 4)

Mr Aliyev had had the right in domestic law to appeal against the decisions ordering and extending his detention. He had appealed against all of those. While Mr Aliyev had been present during the first appeal challenging his placement in detention, he had been absent from all the subsequent appeals with which he challenged the extension of his detention, which had been attended only by his lawyer.

In view of the total length of pre-trial detention and what had been at stake for Mr Aliyev, namely his liberty, the national courts could have ensured hearing him in person and thus affording him an opportunity to convey directly his personal situation and arguments for his release. Alternatively, the courts should have ensured that he had been effectively represented by counsel.

However, while his lawyer was present at the court hearings, those hearings had been held as a matter of formality and had not been genuinely adversarial; moreover, the prosecution's submissions had not been made available to the lawyer, depriving him of the opportunity to effectively contest the reasons invoked by the prosecution for the extension of pre-trial detention. The courts had not even addressed any of the specific arguments advanced by Mr Aliyev in his written submissions challenging his continued detention, although those arguments had been neither irrelevant nor frivolous.

The Court concluded that the Azerbaijani courts had failed to carry out a judicial review of the nature and scope required by the Convention, in violation of Article 5 § 4.

Right to protection of property (Article 1 of protocol No 1)

As Mr Aliyev had not complained in the first place before the national courts about the search and seizure of his family's and personal belongings, the Court rejected that complaint as inadmissible.

As regards the attachment of his shares in the Bank of Baku, the Court noted that Mr Aliyev had not been deprived of them but provisionally prevented from using them and from disposing of them pending trial. Azerbaijani law at the time had allowed only attachment of assets of individuals "accused" of a criminal offence, with a view to securing a possible penalty of confiscation imposed at the outcome of the criminal proceedings. However, at the time of delivery of the attachment decision, Mr Aliyev had not been an "accused person" as he had not yet been formally charged with the specific criminal offences of which the bank shares were considered as proceeds. While the Court observed that it was in the first place for the national authorities, including the courts, to apply and interpret the law, and that its own power in that respect was limited, it noted

that neither the Azerbaijani courts, nor the Government had explained why and how the provisions on attachment of property of “accused persons” could be applied to Mr Aliyev when at the time he had not been charged with the relevant offences.

Consequently, the attachment of his shares in the Bank of Baku was not in accordance with the law. There had, therefore, been a violation of Article 1 of Protocol No 1.

[Other articles](#)

The Court rejected the other complaints of Mr Aliyev as inadmissible.

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

The Court held that Azerbaijan was to pay Mr Aliyev 7,000 euros (EUR) in respect of non-pecuniary damage and EUR 25,000 for 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.