



## Detention of activist was unjustified and aimed to punish him for activities as human rights defender

In today's **Chamber** judgment<sup>1</sup> in the case of [Rasul Jafarov v. Azerbaijan](#) (application no. 69981/14) 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,

**a violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court),**

**a violation of Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5,**

The Court further held that the Government of Azerbaijan had failed to comply with their obligations under **Article 34 (right of individual petition)**.

The case concerned the complaint by a well-known human rights defender that his arrest and pre-trial detention had been unjustified.

The Court considered that a combination of factors supported the argument that the actual purpose of the measures against Mr Jafarov had been to silence and to punish him for his activities as a human rights defender: his arrest and detention in 2014 had occurred in the general context of an increasingly harsh and restrictive legislative regulation of NGO activity; there had been numerous statements by high-ranking officials and articles published in pro-Government media which had accused local NGOs and their leaders, including Mr Jafarov, of being traitors and foreign agents; and several other notable human rights activists, who had also cooperated with international organisations protecting human rights, had similarly been arrested and charged.

### Principal facts

The applicant, Rasul Agahasan oglu Jafarov, is an Azerbaijani national who was born in 1984 and lives in Baku.

Mr Jafarov is a well-known civil-society activist and human rights defender. He is the chairman and co-founder of a non-governmental organisation (NGO), Human Rights Club, which has unsuccessfully attempted to obtain legal entity status with the authorities. Moreover, he has been involved in the preparation of various reports, including in the context of the work of international bodies, relating to human rights issues in Azerbaijan.

In July 2014 Mr Jafarov was invited to the Prosecutor General's office, where he was questioned as a witness in connection with criminal proceedings which had been opened in April 2014 concerning alleged irregularities in the financial activities of a number of NGOs. Subsequently searches were conducted in the office of the Human Rights Club, and a number of documents related to book-keeping were seized.

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 early August 2014 Mr Jafarov was again invited to the Prosecutor General's office for questioning as a witness. On his arrival there, he was arrested and charged with the offences of illegal entrepreneurship, large-scale tax evasion and abuse of power. A district court subsequently ordered his placement in pre-trial detention for three months. Mr Jafarov appealed, arguing that there was no reasonable suspicion that he had committed a criminal offence and that there was no risk of absconding, having regard to the fact that he had cooperated with the investigating authorities by appearing for questioning and that he had recently returned to Azerbaijan from a trip abroad although he knew that he was under investigation. His appeal against the detention order was dismissed and his detention was extended for another three months. In addition to the original charges, he was charged, in December 2014, with high-level embezzlement. In April 2015 he was convicted of all charges and sentenced to six and a half years' imprisonment. In addition, he was deprived of the right to hold official positions in State authorities and to engage in entrepreneurial activity for three years. Mr Jafarov's appeal against the judgment is currently pending.

Mr Jafarov submitted to the European Court of Human Rights the statements by a number of organisations which had made donations to the Human Rights Club, including the Norwegian and British Embassy in Azerbaijan. According to all those statements, Mr Jafarov had regularly provided the respective donor with the necessary information concerning the expenditure of the funds. The donors also specified that they were confident that the funds had been used properly for the relevant projects for which they had been awarded.

Before and after Mr Jafarov's arrest, numerous articles about him were published in the media close to the Government, in which he was described as a spy for foreign interests and "a traitor". A number of politicians made similar statements in interviews.

In November 2014 disciplinary proceedings were brought against Mr Jafarov's lawyer, Khalid Bagirov, who is also representing other applicants in proceedings before the European Court of Human Rights. As a result, his licence to practice law was suspended and the authorities stopped allowing him to meet Mr Jafarov in prison.

## Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 (c) and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Mr Jafarov complained that he had been arrested and detained without a reasonable suspicion that he had committed a criminal offence and that the national courts had failed to provide relevant and sufficient reasons justifying his continued detention. Relying further on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), he complained that the national courts had not properly addressed the arguments in favour of his release.

Furthermore, Mr Jafarov relied on Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 5, complaining that his Convention rights had been restricted for purposes other than those prescribed in the Convention. In particular, his arrest and detention had had the purpose of punishing him as a government critic, silencing him as an NGO activist and human rights defender, discouraging others from such activities, and paralysing civil society in the country. Moreover, he complained that since his arrest and detention had been intended to silence him as an activist there was a breach of his rights under Article 11 (freedom of assembly and association). Finally, he introduced a new complaint in January 2015, maintaining that the suspension of his lawyer's licence to practice law and the impossibility of meeting him in prison had amounted to a breach of his rights under Article 34 (right of individual petition).

The application was lodged with the European Court of Human Rights on 10 October 2014.

The Council of Europe Commissioner for Human Rights made use of his right under Article 36 § 3 of the Convention to intervene as a third party and submitted written observations. Observations were

also received from the Helsinki Foundation for Human Rights, Human Rights House Foundation and Freedom Now, who had been given leave to intervene as third parties in the written procedure (Article 36 § 2).

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

Angelika **Nußberger** (Germany), *President*,  
Ganna **Yudkivska** (Ukraine),  
Khanlar **Hajiyev** (Azerbaijan),  
André **Potocki** (France),  
Yonko **Grozev** (Bulgaria),  
Síofra **O’Leary** (Ireland),  
Mārtiņš **Mits** (Latvia),

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

## Decision of the Court

### Article 5

The Court observed that it could be deduced from the description of the three original charges against Mr Jafarov in August 2014 – which lacked a certain level of coherence and order – that all the misconduct attributed to him had essentially stemmed from the fact that he had operated an NGO lacking State registration and that he had failed to register the grants received between 2010 and 2014. The Court came to the conclusion that the facts relied on by the prosecuting authorities had not been sufficient for a reasonable suspicion that he had committed any of the criminal offences – “illegal entrepreneurship”, “tax evasion” or “abuse of power” – with which he had been charged, as required for an individual’s lawful arrest or detention under Article 5 § 1 (c).

The Court noted in particular that, as had been confirmed by the Government of Azerbaijan, domestic legislation did not prohibit operating NGOs without State registration. However, without such registration, NGOs faced difficulties such as being unable to open bank accounts or receive funding as a legal entity. It was specifically owing to those difficulties that Mr Jafarov had conducted the activities in question in his individual capacity. According to his submissions, unrefuted by the Government, there had been no procedure in place at the relevant time for registering grants received by individuals. Furthermore, under domestic law, non-commercial activity was not subject to profit tax or value-added tax. Moreover, as regards the money received as grants for specific non-commercial purposes, the relevant donors had confirmed that it had been spent as designated.

Apart from relying on Mr Jafarov’s alleged failure to register the grants he had received, which in itself was not criminalised under domestic law, the prosecuting authorities had never demonstrated that there was any evidence that he might have used the money for generating profit or for purposes other than those indicated in the grant agreements, or that the purposes indicated in the grant agreements had been both commercial and illegal.

As for the additional charges of December 2014, they had been brought against Mr Jafarov after the latest court order extending his pre-trial detention. Accordingly they were of no significance for the assessment of whether the suspicion against him had been reasonable.

The Court concluded that there had been a violation of Article 5 § 1. In view of that finding the Court considered it unnecessary to examine separately any issues under Article 5 § 3.

Finally, the Court found a violation of Article 5 § 4 on account of the lack of adequate judicial review of the lawfulness of Mr Jafarov’s detention. It noted in particular that in their decisions the domestic courts had limited themselves to copying the prosecution’s submissions and using short and vague formulae for rejecting his complaints about his detention as unsubstantiated.

### Article 18 in conjunction with Article 5

The Court considered that a combination of factors supported the argument submitted by Mr Jafarov and by the third parties that his arrest and detention had been part of a larger campaign to “crack down on human rights defenders in Azerbaijan” in 2014.

First, Mr Jafarov’s arrest and detention had occurred in the general context of an increasingly harsh and restrictive legislative regulation of NGO activity and funding. Second, the Court took note of the numerous statements by high-ranking officials and articles published in pro-Government media which had consistently accused local NGOs and their leaders, including Mr Jafarov, of being traitors, foreign agents, and of contributing to a negative image of the country by reporting on its human rights situation. Finally, Mr Jafarov’s situation could not be viewed in isolation. Several notable human rights activists who had also cooperated with international organisations protecting human rights – including the Council of Europe – had also been arrested and similarly charged.

The totality of those circumstances indicated that the actual purpose of the measures against Mr Jafarov had been to silence and to punish him for his activities in the area of human rights. The Court therefore found that the restriction of his liberty had been imposed for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5 § 1 (c). This conclusion was a sufficient basis for finding a violation of Article 18 in conjunction with Article 5.

### Article 34

It was not in dispute that, following the suspension of his licence to practice law in December 2014, Mr Jafarov’s representative, Mr Bagirov, had been refused permission to meet with him. The domestic authorities had not allowed such a meeting although it was clear that the request for it related to Mr Jafarov’s pending case before the European Court of Human Rights.

The Court underlined in particular that while the suspension of Mr Bagirov’s licence under domestic law prevented him from representing clients in criminal proceedings at national level, it could not be interpreted as preventing him from representing applicants before the ECtHR. Given that under the Rules of Court (Rule 36 § 4 (a)) permission to represent an applicant could be granted to a non-advocate, States had to ensure that non-advocate representatives were allowed to visit detainees who had lodged or intended to lodge an application before the Court under the same conditions as advocates.

As regards the Government’s argument that Mr Jafarov’s representative had been able to submit to the Court detailed and lengthy observations, the Court pointed out that a failure by the Government to comply with their obligations under Article 34 did not necessarily require that the interference had a noticeable impact on the exercise of the right of individual petition. In view of those considerations the Court found that Azerbaijan had failed to comply with its obligations under Article 34.

### Other articles

Having regard to its findings under Article 5 §§ 1 and 4 and under Article 18, and to the fact that a separate application concerning the authorities’ refusal to register Mr Jafarov’s NGO (application no. 27309/14,) is pending before it, the Court considered that it was not necessary to examine whether there had been a violation of Article 11 in this case.

### Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay Mr Jafarov 25,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 7,448 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.