



Azerbaijani authorities' refusal to register human rights NGO was unlawful

In today's **Chamber judgment**¹ in the case of [Jafarov and Others v. Azerbaijan](#) (application no. 27309/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of association) of the European Convention on Human Rights

The case concerned the authorities' repeated refusal to register a non-governmental organisation set up to defend human rights in Azerbaijan. The authorities' ultimate reason for the refusal was the NGO founders' failure to specify the powers of a "legal representative" in their founding document. The NGO founders, applicants in this case, contested the refusals before the domestic courts, without success.

The Court found in particular that the domestic law on registration was not clear and open to various interpretations, in particular regarding the term "legal representative" and the situations where the law required his or her powers to be specified.

The courts should have used the assessment of the applicants' case as an opportunity to clarify the provision in question, however, they had simply upheld the authorities' actions as lawful, without any detailed reasoning. They had thus avoided the crux of the applicants' well-founded arguments: that appointing a legal representative was optional under the law and that, as they had chosen not to appoint one, they could not be penalised for failing to specify what that person's powers were; and that the authorities had failed to comply with the registration procedure.

Principal facts

The applicants are Rasul Agahasan oglu Jafarov, Emin Rafiq oglu Huseynov, and Sabuhi Nazir oglu Gafarov, three Azerbaijani nationals who were born in 1984, 1979, and 1974 respectively; and an association they founded in Baku in 2010 called the Human Rights Club (HRC).

In the document founding their association, the applicants elected Mr Jafarov as chairman and decided to apply to the Ministry of Justice for registration as a public association with the status of a legal entity.

Throughout 2011 they made three applications for registration to the Ministry, which were returned each time because they had not complied with various legal formalities. The Ministry's third and last decision, in December 2011, cited the applicants' failure to specify the powers of a "legal representative" in their founding document as the reason for refusing registration.

The applicants subsequently went to court, arguing that the law did not require the appointment of a legal representative and that, as they had chosen not to appoint one, they could not be penalised for failing to specify what his or her powers were. They also complained that the Ministry had failed to comply with the registration procedure, which required notification of all alleged errors or omissions after the first review and not in sequence, as had been the case for their applications.

However, the courts, ultimately the Supreme Court in 2013, upheld the Ministry's actions as lawful.

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 on Article 11 (freedom of assembly and association), the applicants complained about the repeated refusals to register their association. They argued that the real reason for the refusals had been to prevent them from carrying out their human rights work, referring to the persecution of NGO activists and human rights defenders in general in Azerbaijan at the time and in particular of Mr Jafarov, who had been arrested in 2014 and convicted on charges of illegal entrepreneurship, tax evasion and abuse of power for allegedly illegally receiving funding for the HRC (see [Rasul Jafarov v. Azerbaijan](#), application no. 69981/14 of 2016). The applicants alleged that Mr Huseynov and Mr Gafarov had been forced to leave the country, fearing the same persecution.

The application was lodged with the European Court of Human Rights on 18 March 2014.

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

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
Ganna **Yudkivska** (Ukraine),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

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

Decision of the Court

Without State registration HRC could not obtain the status of a legal entity and associated rights such as obtaining funding, opening a bank account or hiring employees, meaning it could not function properly. The Court therefore considered that the Ministry of Justice’s repeated rejection of the registration requests had interfered with the applicants’ right to freedom of association.

The Court went on to examine whether that interference had been justified within the meaning of Article 11 of the Convention, and in particular whether it had been “prescribed by law”.

Firstly, it considered that the relevant law, the Law on State Registration, as applied and interpreted at the time, had not provided a precise definition of the term “legal representative” used in the context of a legal entity. Nor was it clear in what circumstances such a person could be considered to have been appointed.

In the applicants’ case, the Ministry of Justice had never officially clarified who it considered to be the “legal representative” of HRC. Indeed, there was a discrepancy between the Government’s position before the Strasbourg Court, according to which the legal representative was Mr Jafarov, HRC’s chairman, and the Baku Court of Appeal’s finding that all three founders were legal representatives collectively. Moreover, the Ministry had interpreted the relevant provision as requiring the applicants to mention the “legal representative” in their founding decision and specify his or her powers, despite the fact that the provision stated in plain language that these were requirements only if they had actually chosen to appoint such a person.

In a situation where the law was not clear and was open to various interpretations, the domestic courts should have given a reasonable definition of the term “legal representative” and the situations where the law required his or her powers to be specified. However, by and large the courts had limited themselves to upholding the Ministry’s actions as lawful without any detailed reasoning, thus avoiding the crux of the applicants’ arguments.

The Court therefore found that the law, as in force and applied at the time, had failed to protect against arbitrary application by the authorities, and had not met the “quality of law” requirement of the Convention.

Furthermore, it found that the Ministry had not complied with the requirements of domestic law on the registration procedure. Instead of notifying the applicants of all the omissions in its application after the first review, as required by law, it had found a new omission after each successive request. The provision requiring that deficiencies in applications for registration be identified all in one review had not therefore been applied correctly in the applicants’ case, resulting in an unlawful delay and *de facto* preventing the applicants’ association from obtaining legal-entity status.

The result had been an unlawful refusal by the national authorities to register the association. Accordingly, the interference with the applicants’ right to freedom of association had not been “prescribed by law”, in violation of Article 11.

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay all the applicants jointly 4,500 euros (EUR) in respect of non-pecuniary damage and EUR 2,040 in respect of costs and expenses.

The judgment is available only in English.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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.