



Arrest and detention of rights activists on Molotov cocktail charges was in violation of their rights

The case [Rashad Hasanov and Others v. Azerbaijan](#) (applications nos. 48653/13, 52464/13, 65597/13, and 70019/13) concerned the detention of the applicants, who are civil society activists, on charges of obtaining and supplying Molotov cocktails.

In today's **Chamber** judgment¹ in the case 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.

The Court found in particular that the charges against the applicants, who are members of a non-governmental organisation called NIDA, were inconsistent and had lacked clarity, with no evidence being presented to back up the investigators and prosecutors' accusations. It ruled that the applicants had been detained without a reasonable suspicion that they had committed an offence.

The Court also held, unanimously, that there had been a **violation of Article 18 (limitation on use of restrictions on rights)** finding that the action taken against the applicants had been because they were members of NIDA, which had been part of a wider crackdown on civil society in Azerbaijan.

It awarded each applicant 20,000 euros in compensation for non-pecuniary damage.

Principal facts

The applicants, Rashad Zeynalabdin oglu Hasanov, Zaur Araz oglu Gurbanli, Uzeyir Mahammad oglu Mammadli, and Rashadat Fikrat oglu Akhundov Akhundov, are Azerbaijani nationals who were born in 1982, 1987, 1987, and 1984 respectively and live in Lankaran, Khirdalan, Barda, and Baku (all in Azerbaijan).

In 2013 NIDA held peaceful protests about the deaths of soldiers in non-combat situations. Just before one of the protests, set for 10 March 2013, three members of NIDA, S.N., B.G. and M.A., were arrested by the Ministry of National Security and charged with possessing narcotics and Molotov cocktails. The authorities also accused the three of planning to incite violence and civil unrest.

The four applicants were subsequently detained on various dates in March and April. The charges, which were worded identically for each man, stated that they had unlawfully obtained 22 Molotov cocktails and had supplied them to the NIDA members who had been arrested earlier.

The applicants were remanded in custody by a court, which also used identical wording for its decisions. They appealed unsuccessfully against the remand decisions and against further decisions to extend their detention. They denied all the charges, alleging that they were politically motivated. They also complained that there was no evidence against them.

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 5 §§ 1 (c) and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) the applicants complained of a lack of a reasonable suspicion that they had committed any offences and that the courts had failed to provide proper reasons for their continued detention.

They also raised a complaint under Article 18 (limitation on use of restrictions of rights), alleging that their arrest and detention had aimed at punishing them for their political and social activism.

The first application was lodged with the European Court of Human Rights on 12 July 2013 and was followed by the others on later dates of the same year.

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

Angelika **Nußberger** (Germany), *President*,
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 5 § 1

The Court first noted that there were inconsistencies in the authorities' case against the applicants. The charges, which had been worded the same for each man, had accused them of obtaining 22 bottles with Molotov cocktails and of storing them in S.N. and B.G.'s flats. However, the authorities had earlier stated that S.N. and B.G. had prepared the Molotov cocktails themselves.

In addition, the investigating authorities never detailed where the applicants had obtained the materials for the flammable devices, which themselves did not come under the Article of the Criminal Code with which they were charged, which concerned explosives. The charges were not altered even when an expert report found that only two of the Molotov cocktails could be considered as explosive devices.

The Court also found that there were large gaps in the State's case against the applicants: the prosecution authorities never demonstrated that there was any evidence or information linking the applicants to the Molotov cocktails or how the prosecutors had reached the conclusion that the applicants had obtained those items and then arranged their storage in the flats.

Furthermore, the authorities never presented any evidence, either when bringing the charges against the applicants or when asking for them to be remanded in custody. The courts never subjected the prosecution's detention requests to close scrutiny, as they were required to do under the Code of Criminal Procedure.

Overall, the Court found that the material relied on by the domestic authorities did not meet the minimum Convention standard of providing a reasonable suspicion to justify someone's arrest and detention and there had therefore been a violation of the applicants' rights.

Article 18

The Court noted that it had to examine whether the restriction on the applicants' rights under Article 5 had been driven by an ulterior motive. Given the lack of a reasonable suspicion against the applicants and the contextual background to the case, it found that proof of such a motive existed.

It based its conclusion on the fact that from the outset the authorities had targeted NIDA and had linked the initial arrest of S.N., B.G. and M.N. with the group's activities. The Court also attached significance to the fact that the authorities referred to NIDA's activities as illegal, without any reason or evidence, only a few days before the applicants were arrested.

The Court rejected the Government's argument that the prosecution had not been politically motivated because the applicants were not opposition leaders. They were members of one of the most active youth organisations in the country, which had organised protests, and their arrest had come soon after a series of demonstrations.

Looking at the facts and circumstances of the case, including reports by international human rights organisations about a crackdown on civil society in Azerbaijan, the Court found that the arrest and detention of the applicants was to silence and punish them for their active involvement in NIDA.

As the applicants had not been detained for a purpose covered by the Convention, there had been a violation of Article 18 in conjunction with Article 5.

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay each applicant 20,000 euros (EUR) in respect of non-pecuniary damage. In respect of costs and expenses, it ordered the State to pay EUR 5,000 jointly to the first and third applicants; EUR 3,000 to the second applicant; and EUR 3,000 to the fourth applicant.

The judgment is available only in English.

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Press contacts

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

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

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)

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.