



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## FIFTH SECTION

### CASE OF SHENTURK AND OTHERS v. AZERBAIJAN

*(Applications nos. 41326/17 and other applications  
– see appended list)*

### JUDGMENT

Art 5 § 1 • Unlawful detention of applicants constituting part of an extra-legal transfer to their country of origin in circumvention of domestic and international law safeguards  
Art 3 (procedural) • Expulsion • Denial of effective guarantees of protection against arbitrary *refoulement* • Failure to assess risks faced by the applicants on their return before removal

STRASBOURG

10 March 2022

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Shenturk and Others v. Azerbaijan,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O’Leary, *President*,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia,

Ivana Jelić,

Arnfinn Bårdsen,

Mattias Guyomar, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

four applications (nos. 41326/17, 8098/18, 8147/18 and 8384/18) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Turkish nationals, Mr Taci Shenturk (“the first applicant”), Mr Isa Ozdemir (“the second applicant”), Mr Ayhan Seferoglu (“the third applicant”) and Mr Erdogan Taylan (“the fourth applicant”) (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints concerning Articles 3, 5 and 13 of the Convention in respect of all the applicants and in addition a complaint concerning Article 1 of Protocol No. 7 to the Convention in respect of the first applicant and to declare the remainder of the applications inadmissible;

the decision of the Turkish Government not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the decision of the President of the Section to give Ms A. Nasirli leave to represent the applicants and Mr S. Rahimli leave to represent the first applicant in the proceedings before the Court (Rule 36 § 4 (a) *in fine* of the Rules of Court),

the parties’ observations;

Having deliberated in private on 8 February 2022,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. Relying mainly on Articles 3 and 5 of the Convention, the applicants complain that their detention and subsequent removal from Azerbaijan to Turkey were in breach of their Convention rights.

## THE FACTS

2. At the time of the latest communication with the applicants, they remained in custody in Turkey. Their personal details are summarised in the

appended table. The second, third and fourth applicants were represented by Ms A. Nasirli while the first applicant was represented by both Ms A. Nasirli and Mr S. Rahimli, lawyers based in Azerbaijan.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

#### I. APPLICATION NO. 41326/17

##### **A. The first applicant's account**

5. On an unspecified date the applicant moved to Azerbaijan, where he worked in private schools affiliated to the Gülen movement.

6. He was granted a temporary residence permit, which was regularly extended. On 9 March 2017 his temporary residence permit was extended anew until 9 September 2017.

7. On 3 June 2017 the Turkish authorities informed their Azerbaijani counterparts via Interpol that the applicant's passport had been cancelled and therefore they requested the Azerbaijani authorities to arrest and deport the applicant to Turkey.

8. At about 2 p.m. on 7 June 2017 the applicant was arrested and brought to the temporary detention facility of the Organised Crime Department of the Ministry of Internal Affairs ("the OCD"), where he was informed that he would be taken to Heydar Aliyev International Airport in Baku and deported to Turkey at 8.30 p.m. that same day. The applicant informed officers at the OCD of his intention to request asylum in Azerbaijan on the grounds that he would face persecution in Turkey and repeatedly asked them not to deport him. However, his demands were ignored.

9. While in custody, the applicant informed his wife and friends of his arrest and imminent removal. His friends retained a lawyer who lodged an asylum application on the applicant's behalf with the Office of the United Nations High Commissioner for Refugees (UNHCR) in Baku, the State Migration Service ("the SMS"), the OCD and the State Committee for Affairs of Refugees and Internally Displaced Persons, asking them to grant the applicant refugee status owing to the risk of his being subjected to persecution and ill-treatment in Turkey.

10. On the same day the UNHCR Baku Office issued a temporary protection letter with respect to the applicant, his wife and their four children, valid until 7 September 2017, on the basis that they were registered with the UNHCR and their asylum request was under consideration by the national authorities.

11. At 8.30 p.m. on the same day the applicant's wife, children and friends arrived at the airport, apparently in an attempt to prevent the applicant's deportation. The applicant was able to speak to his family members and

friends for five minutes. Thereafter he was led away by the OCD officers to proceed with boarding for the scheduled flight. At customs and border control, the applicant informed the officer on duty from the State Border Service that he was seeking asylum in Azerbaijan. The officer in question called a representative from the SMS and the applicant reiterated his request. However, according to the applicant the representative of the SMS ignored his request.

12. At some point, while the applicant was already in the boarding area, a staff member of the UNHCR in Azerbaijan, arrived at the airport and intervened with a view to preventing the applicant's removal. As a result, the applicant was not put on the plane and instead was taken back to the detention facility of the OCD. That intervention of the staff member of the UNHCR in Azerbaijan at the airport on 7 June 2017 was confirmed by a letter dated 9 June 2017 from the country representative of the UNHCR in Azerbaijan.

13. At about 11 p.m. on the same day, the applicant's lawyer went to the detention facility to meet the applicant, only to find that he was not allowed to do so.

14. On 8 June 2017 the applicant's lawyer applied to the SMS with a written request to grant the applicant refugee status. The request remained unanswered.

15. On the same date, without informing the UNHCR Baku Office or the applicant's family, the OCD officers took the applicant back to Heydar Aliyev International Airport and put him on a plane to Ankara. Upon arrival in Ankara the applicant was arrested by the Turkish police and sent to Konya, where he was remanded in custody in connection with a criminal investigation into his alleged involvement in the "Fetullahist Terrorist Organisation / Parallel State Structure" (Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması, hereinafter referred to as "FETÖ/PDY").

16. Meanwhile, the applicant's wife, who was not aware at the time of his removal, applied to various authorities enquiring about his whereabouts.

17. On 23 June 2017 the State Border Service informed the applicant's wife that her husband had been deported to Turkey on 8 June 2017.

18. On 6 July 2017 the OCD also informed the applicant's wife that her husband "had left Azerbaijan" for Turkey on 8 June 2017 because the Turkish authorities had issued an arrest warrant in respect of him on the grounds that he was suspected of being involved in FETÖ/PDY.

## **B. The Government's account**

19. On 3 June 2017 the Turkish authorities informed their Azerbaijani counterparts via Interpol that the applicant's passport had been cancelled and therefore they requested the Azerbaijani authorities to arrest and deport the applicant to Turkey.

20. On 8 June 2017 the Ministry of Internal Affairs of Azerbaijan received a letter from the Turkish embassy in Baku, in which it was stated that the applicant had to be arrested as a suspect for participation in an armed terrorist group on the basis of a decision of Konya Criminal Court no. 2.

21. On the same day the applicant was arrested by the Azerbaijani authorities and deported to Turkey.

22. According to the Government, the applicant did not request asylum in Azerbaijan.

## II. APPLICATION NO. 8098/18

### A. The second applicant's account

23. In 1992 the applicant moved to Azerbaijan, where he first worked as a teacher in private schools affiliated to the Gülen movement and subsequently worked in different companies affiliated to the latter movement.

24. On 9 October 2017 the applicant, while travelling to Georgia, was stopped by Azerbaijani border guards and informed of a travel ban imposed on him.

25. In December 2017 the applicant applied to the SMS for an extension of his residence visa.

26. On 24 January 2018 the SMS rejected the applicant's request and cancelled his residence permit. He was ordered to leave the country by 2 February 2018.

27. On 2 February 2018 the applicant applied for asylum to the UNHCR in Azerbaijan and the latter provided him with a protection letter as a person of concern.

28. On 2 February 2018 the applicant was summoned to the Prosecutor General's Office for questioning as a witness in the context of criminal proceedings against FETÖ/PDY. The questioning took place on 5 February 2018.

29. On 8 February 2018 the applicant was arrested by the police and taken to the Narimanov District Court, which on the same date ordered his detention pending extradition for a period of forty days. The decision was based on an arrest warrant in respect of the applicant issued by Ankara Criminal Court no. 2 on 5 January 2018. The applicant appealed against that decision, complaining of the lack of justification for his detention pending extradition.

30. On 10 February 2018 the applicant's wife lodged an asylum request with the SMS, raising fears of ill-treatment and persecution of her husband in Turkey.

31. On 15 February 2018 the Baku Court of Appeal upheld the Narimanov District Court's decision of 8 February 2018.

32. On 12 July 2018 the Baku Court of Serious Crimes refused the applicant's extradition to Turkey and ordered his release. The court held that

the applicant's extradition to Turkey was impossible on the grounds that he had already been granted refugee status by the UNHCR in Azerbaijan. It appears from the decision of 12 July 2018 that the representatives of the Ministry of Justice and the Prosecutor General's Office also stated at the court hearing that the applicant should not be extradited to Turkey on the grounds that he had been granted refugee status by the UNHCR in Azerbaijan. However, despite that, the applicant was not released, but instead was handed over to officers of the SMS who expelled him from Azerbaijan on the same day.

33. Upon his arrival in Turkey, the applicant was arrested by the Turkish authorities and remanded in custody in connection with the criminal investigation into his alleged involvement in FETÖ/PDY.

#### **B. The Government's account**

34. On 10 December 2017 the applicant applied to the SMS, requesting an extension of his temporary residence permit.

35. On 19 January 2018 the SMS refused the applicant's request and cancelled his resident permit, which was due to expire on 15 February 2018.

36. On 8 February 2018 the applicant was arrested by the police and brought before the Narimanov District Court.

37. On the same day the Narimanov District Court decided to detain the applicant pending extradition, based on the decision of Ankara Criminal Court no. 2 to arrest him.

38. On 7 March 2018 the applicant's wife applied for asylum on behalf of her husband.

39. On 5 April 2018 the SMS refused the asylum request.

40. On 12 July 2018 the Baku Court of Serious Crimes refused the applicant's extradition to Turkey and ordered his release for the same reasons as those described in paragraph 32 above.

41. On 12 July 2018 the SMS ordered the applicant's expulsion to Turkey pursuant to Article 79.1.1 of the Migration Code.

### III. APPLICATION NO. 8147/18

#### **A. The third applicant's account**

42. In 1995 the applicant moved to Azerbaijan, where he first worked as a teacher in private schools affiliated to the Gülen movement and subsequently worked in different companies affiliated to the latter movement.

43. In 2007 the applicant was provided with a permanent residence card.

44. On 7 October 2017 the applicant, while travelling to Georgia, was stopped by Azerbaijani border guards who informed him of a travel ban imposed on him.

45. On 2 February 2018 the applicant was summoned to the Prosecutor General's Office for questioning as a witness, in the context of criminal proceedings against FETÖ/PDY. The questioning took place on 5 February 2018.

46. On 8 February 2018 the applicant was arrested by the police and taken to the Narimanov District Court, which on the same day ordered his detention pending extradition for a period of forty days. The decision was based on the arrest warrant in respect of the applicant issued by Ankara Criminal Court no. 2 on 5 January 2018. The applicant appealed against that decision, complaining of the lack of justification for his detention pending extradition.

47. On 10 February 2018 the applicant's wife lodged an asylum request with the SMS, raising fears of ill-treatment and persecution of her husband in Turkey.

48. On 15 February 2018 the Baku Court of Appeal dismissed the applicant's appeal.

49. On 19 February 2018 the prosecution authorities requested the Narimanov District Court to release the applicant pending extradition. On the same day the Narimanov District Court ordered the applicant's release having regard to the fact that the applicant had a permanent place of residence in Azerbaijan, the applicant's personality and other important facts of the case. However, despite that, he was not released, but instead was handed over to officers of the SMS who expelled him from Azerbaijan on the same day.

50. On 24 February 2018 the SMS informed the applicant's wife that her husband's asylum request had been rejected.

51. Upon his arrival in Turkey, the applicant was arrested by the Turkish authorities and remanded in custody in connection with a criminal investigation into his alleged involvement in FETÖ/PDY.

## **B. The Government's account**

52. On 29 December 2016 the applicant applied to the SMS, requesting an extension of his residence permit.

53. On 27 February 2017 the SMS granted the applicant's request.

54. On 8 February 2018 the applicant was arrested by the police and brought before the Narimanov District Court.

55. On the same day the Narimanov District Court ordered the applicant's detention pending extradition.

56. On 9 February 2018 the applicant's wife applied for asylum on his behalf.

57. On 19 February 2018 the SMS refused the asylum request and revoked the applicant's residence permit.

58. On the same day the Narimanov District Court ordered the applicant's release for the same reasons as those set out in paragraph 49 above.



59. On the same day the applicant requested the SMS to place him in its temporary detention facility.

60. On 19 February 2018 the SMS ordered the applicant's expulsion to Turkey pursuant to Article 79.1.1 of the Migration Code.

#### IV. APPLICATION NO. 8384/18

##### **A. The fourth applicant's account**

61. In 1993 the applicant moved to Azerbaijan, where he first worked as a teacher in private schools affiliated to the Gülen movement and subsequently worked in various companies affiliated to the latter movement.

62. On 9 October 2017 the applicant, while travelling to Georgia, was stopped by Azerbaijani border guards who informed him of a travel ban imposed on him.

63. On 2 February 2018 the applicant was summoned to the Prosecutor General's Office for questioning as a witness, in the context of criminal proceedings against FETÖ/PDY. The questioning took place on 5 February 2018.

64. On 8 February 2018 the applicant was arrested by the police and taken to the Binagadi District Court, which on the same day ordered his detention pending extradition for a period of forty days. The decision was based on the arrest warrant in respect of the applicant issued by Ankara Criminal Court no. 2 on 5 January 2018. The applicant appealed against that decision, complaining of the lack of justification for his detention pending extradition.

65. On 10 February 2018 the applicant's wife lodged an asylum request with the SMS, raising fears of ill-treatment and persecution in Turkey. No reply followed.

66. On 16 February 2018 the Baku Court of Appeal dismissed the applicant's appeal.

67. On 19 February 2018 the prosecution authorities asked the Binagadi District Court to release the applicant pending extradition. On the same day the Binagadi District Court ordered the applicant's release, relying on the prosecutor's request in that connection and pointing out the importance of imposing remand in custody only as an exceptional measure. Despite that, he was not released, but instead handed over to officers of the SMS who expelled him from Azerbaijan on the same day.

68. Upon his arrival in Turkey, the applicant was arrested by the Turkish authorities and remanded in custody in connection with a criminal investigation into his alleged involvement in FETÖ/PDY.

## **B. The Government's account**

69. On 3 March 2017 the applicant applied to the SMS, requesting an extension of his residence permit.

70. On 11 April 2017 the SMS granted his request and extended his residence permit until 11 April 2018.

71. On 8 February 2018 he was arrested and brought before the Binagadi District Court, which ordered his detention pending extradition.

72. On 9 February 2018 the applicant's wife applied for asylum on his behalf.

73. On 19 February 2018 the SMS refused the asylum request and cancelled the applicant's residence permit.

74. On the same day the Binagadi District Court ordered his release for the same reasons as those set out in paragraph 67 above.

75. On 19 February 2018 the applicant asked the SMS to place him in its temporary detention centre.

76. On the same day the SMS ordered the applicant's expulsion pursuant to Article 79.1.1 of the Migration Code.

## **RELEVANT LEGAL FRAMEWORK**

### **I. LAW ON EXTRADITION OF 15 MAY 2001**

77. Under the Law on Extradition of 15 May 2001, a court of serious crimes examines proposed extraditions at the request of a foreign State (Article 8.1). The court's decision on an extradition can be challenged in accordance with the provisions of the legislation on criminal procedure (Article 8.2). An extradition request may be refused, *inter alia*, if there are sufficient grounds to believe that the person whose extradition is sought would be subjected to torture or cruel, inhuman or degrading treatment or punishment in the receiving State (Article 3.2).

### **II. MIGRATION CODE OF 2 JULY 2013**

78. Under the Migration Code of 2 July 2013, the relevant State authority has to adopt a decision regarding the possible expulsion of aliens and stateless persons when a visa or a decision to extend a temporary stay, or a permit for temporary or permanent residence, has been revoked (Article 79.1.1).

### **III. LAW ON THE STATUS OF REFUGEES AND INTERNALLY DISPLACED PERSONS OF 21 MAY 1999**

79. Under the Law on the status of refugees and internally displaced persons of 21 May 1999, a decision on granting refugee status must be taken

by the relevant State authority within three months from the date of registration of the request (Article 12). A person whose request for refugee status has been rejected must receive written notification of the decision containing the reasons for the rejection and details of procedures for the purposes of appeal to a court within five days after the adoption of the decision by the relevant authority. The refusal to grant refugee status can be appealed against to a court. An appeal before a court will have the effect of suspending the expulsion of the person from the territory of the Republic of Azerbaijan (Article 13).

## THE LAW

### I. JOINDER OF THE APPLICATIONS

80. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

### II. THE GOVERNMENT'S REQUEST FOR APPLICATION NO. 41326/17 TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

81. On 15 May 2019 the Government submitted a unilateral declaration with a view to resolving the issues raised by application no. 41326/17. They further requested the Court to strike that application out of the list of cases in accordance with Article 37 of the Convention.

82. The first applicant disagreed with the terms of the unilateral declaration. He submitted that the application raised serious issues under the Convention and that the Government's unilateral declaration did not contain general measures to be taken to address those issues.

83. The Court reiterates that it may be appropriate in certain circumstances to strike out an application, or part thereof, under Article 37 § 1 on the basis of a unilateral declaration by the respondent Government even where the applicant wishes the examination of the case to be continued. Whether this is appropriate in a particular case depends on whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, § 75, ECHR 2003-VI).

84. In that connection, the Court notes that the application in question raises serious issues as regards the alleged practice of detention and subsequent expulsion of Turkish nationals affiliated to the Gülen movement to Turkey in breach of their rights guaranteed by the Convention. The Court thus considers that the proposed declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the

Convention and its Protocols does not require it to continue its examination of this particular case.

85. Therefore, the Court refuses the Government's request for it to strike application no. 41326/17 out of its list of cases under Article 37 of the Convention, and will accordingly pursue its examination of the admissibility and merits of the case.

### III. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

#### **A. Objection concerning the applicants' representation before the Court**

86. In their observations submitted in respect of application no. 41326/17, the Government argued that the signature on the application form which authorised Ms Nasirli and Mr Rahimli to represent the first applicant did not belong to the latter and had in fact been forged. In that connection, they provided a copy of a report by an expert who had compared a copy of the first applicant's signature on his passport with that on the application form and who had concluded that the latter signature did not belong to him. As regards the other applications, the Government submitted that the application forms lacked the signatures of the respective applicants.

87. The first applicant disagreed with the Government and submitted a document dated 28 December 2018, handwritten and signed by the first applicant, in which the first applicant declared that the authority form had been signed by him and that he had duly authorised Ms Nasirli and Mr Rahimli to represent him before the Court. The first applicant also submitted two written statements from his wife and one of his friends describing the circumstances in which the authority form had been signed by him. The first applicant furthermore contested the conclusions of the expert report, pointing out that the report did not contain any methodology or explanation in order to explain how the expert reached the conclusion that the authority form had not been signed by him. The applicants in the other applications also disagreed with the Government and submitted that, while their requests under Rule 39 of the Rules of Court had been signed by their respective wives, the application forms had been duly signed by them and had been lodged with the Court by 15 March 2018 as requested by the Court.

88. The Court reiterates at the outset that Rules 45 and 47 of the Rules of Court set out the formal requirements regarding a duly completed power of attorney or authority form (Rule 45 § 3 and Rule 47 § 1 (c)). In the present case it has to determine whether the applicants themselves signed the relevant documents and, in view of all the evidence, whether the applications were made with their consent and whether they maintained an interest in pursuing the cases (compare *Zikatanova and Others v. Bulgaria*, no. 45806/11, § 69, 12 December 2019).

89. As regards the first applicant (application no. 41326/17), the Court notes that it remains unclear what led the Government to suspect that the signature on the application form authorising Ms Nasirli and Mr Rahimli did not belong to the first applicant and to subject that signature to an expert examination. In any event, the Court observes that the first applicant clearly expressed in his handwritten statement dated 28 December 2018, whose authenticity was not challenged by the Government, that the signature on the application form belonged to him and that he had duly authorised Ms Nasirli and Mr Rahimli to represent him. In those circumstances, there is no reason to conclude that the first applicant had not duly authorised Ms Nasirli and Mr Rahimli to represent him before the Court. In that connection, the present case has to be distinguished from the cases where a representative submitted an application form on the applicant's behalf without the latter's knowledge or authorisation (see, for example, *Beskryla v. Ukraine* (dec.) [Committee], no. 15198/17, 5 November 2019, and *Sevruk v. Ukraine* (dec.) [Committee], no. 2714/11, 9 July 2020).

90. As regards the other applications, the Court notes that following its decision of 19 February 2018 deciding not to indicate to the Government, under Rule 39 of the Rules of Court, the interim measure that the applicants in those applications sought, by a letter of 20 February 2018 the Court informed the applicants that in order to maintain their application before the Court they should submit their completed application form by 15 March 2018 and that all the applicants submitted their completed application forms duly signed by them by 15 March 2018.

91. Having regard to the above, the objection raised by the Government in this regard must therefore be dismissed.

## **B. Objection concerning non-exhaustion of domestic remedies**

92. The Government argued that the applicants had failed to bring their complaints before the domestic courts and thus they had failed to exhaust the domestic remedies available to them.

93. The applicants contested the Government's argument. They submitted that their expulsion to Turkey had amounted to extrajudicial rendition and as such had deprived them of any opportunity to exhaust domestic remedies effectively.

94. The Court notes that it has already examined cases in which the applicants had been transferred to Turkey in a largely similar manner, especially resembling the treatment of the first applicant (see *Ozdil and Others v. the Republic of Moldova*, no. 42305/18, 11 June 2019, and *D v. Bulgaria*, no. 29447/17, 20 July 2021). The same considerations apply to the present case: the Court notes that the first applicant was removed to Turkey without any legal proceedings being taken whereas the third and fourth applicants were deported to Turkey while extradition proceedings

against them were pending. Moreover, at least in so far as the third and fourth applicants are concerned, the Government did not dispute the fact that they had been removed to Turkey on the day their asylum requests had been refused by the SMS without being able to challenge those refusals before the domestic courts (see paragraphs 57-60 and 73-76 above). As regards the second applicant, he was deported to Turkey despite the Baku Court of Serious Crimes' decision of 12 July 2018 refusing his extradition to Turkey (see paragraph 32 above). For these reasons, the Court does not accept that, in the very particular circumstances of the present cases, recourse to the domestic courts could have been considered, as argued by the Government, an effective remedy for purposes of exhaustion (compare *Ozdil and Others*, cited above, §§ 36-40, and *D v. Bulgaria*, cited above, §§ 134 and 136).

95. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies.

#### IV. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

96. The applicants complained that their detention had been unlawful and contrary to Article 5 § 1 of the Convention, the relevant parts of which read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

##### **A. Admissibility**

97. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

##### **B. Merits**

###### *1. The parties' submissions*

98. The applicants maintained their complaint that their detention and deportation to Turkey in circumvention of extradition proceedings had been contrary to domestic law and had amounted to extrajudicial rendition.

99. The Government did not submit any observations as regards the first applicant. As to the other applicants, they stated that they had been taken into custody on the basis of arrest warrants issued by Ankara Criminal Court no. 2

on 5 January 2018. The applicants' detention had been ordered by the domestic courts in accordance with domestic law.

## 2. *The Court's assessment*

100. The Court would refer to the general principles which have been reiterated in, *inter alia*, *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, §§ 230-33, ECHR 2012). In particular, the Court notes the fundamental importance of the guarantees contained in Article 5 of the Convention for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It is for that reason that the Court has repeatedly stressed in its case-law that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness. This insistence on the protection of the individual against any abuse of power is illustrated by the fact that Article 5 § 1 circumscribes the circumstances in which individuals may be lawfully deprived of their liberty, it being stressed that these circumstances must be given a narrow interpretation having regard to the fact that they constitute exceptions to a most basic guarantee of individual freedom (*ibid.*, § 230).

101. Turning to the circumstances of the present case, the Court observes at the outset that the applicants' and the Government's versions of events differ to some extent, in particular as regards the various dates on which the events took place. However, the Court does not find it necessary to resolve those discrepancies, as it considers that they do not affect the main issues raised in the present case. As the Court has previously held, it must look behind appearances and investigate the realities of the situation complained of (see *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 163, 9 November 2010).

102. In that connection, the Court notes that the Government do not dispute the fact that all the applicants were detained on the basis of the relevant arrest warrants issued by the Turkish authorities. Nor is it disputed that the first applicant was arrested and detained in Azerbaijan before his deportation to Turkey without any formal decision concerning his deprivation of liberty taken by the Azerbaijani authorities (see paragraphs 5-22 above).

103. As regards the third and fourth applicants, the Court notes that the extradition proceedings were formally instituted against them and their detention pending extradition for a period of forty days was ordered by the competent court on 8 February 2018 (see paragraphs 46 and 64 above). Nonetheless, while those proceedings were still pending, on 19 February 2018, instead of being released from detention pursuant to the court decisions taken at the request of the prosecuting authorities, they were handed over to the SMS officers (see paragraphs 49 and 67 above) and were immediately taken to the temporary detention facility of the SMS and on the same day were deported to Turkey in accordance with the Migration Code owing to

their residence permits being cancelled by the Azerbaijani authorities (see paragraphs 60 and 76 above). Accordingly, it is clear from the documents in the case file that on 19 February 2018 during the period between the delivery of the court decisions ordering their release and their deportation from Azerbaijan to Turkey, the third and fourth applicants were deprived of their liberty by the Azerbaijani authorities in the absence of any formal decision concerning their detention.

104. As to the second applicant, the Court observes that the extradition proceedings were formally instituted against him and his detention pending extradition for a period of forty days was ordered by a competent court on 8 February 2018 (see paragraph 29 above). On 12 July 2018 the Baku Court of Serious Crimes refused his extradition to Turkey and ordered his release from detention, but the second applicant was deported to Turkey immediately after the delivery of that decision in accordance with the Migration Code owing to his residence permit being cancelled by the Azerbaijani authorities (see paragraphs 32 and 41 above). In that connection, the Court firstly observes that the case file does not contain any judicial decision authorising the second applicant's detention pending extradition after the end of his initial detention period of forty days ordered on 8 February 2018 and, accordingly, it appears that he was held in detention from the end of the detention period of forty days to 12 July 2018 in the absence of any judicial decision authorising his detention. The Court also notes that the second applicant's deprivation of liberty by the Azerbaijani authorities continued after the delivery of the decision of 12 July 2018 ordering his release until his deportation from Azerbaijan to Turkey in the absence of any formal decision concerning his detention during that period.

105. Against this background, the Court considers that the whole period of detention of the first applicant and the above indicated various periods of detention of the second, third and fourth applicants by the Azerbaijani authorities were not based on a formal decision authorising their detention as required by the domestic law (see paragraphs 102-04 above) and were accordingly unlawful within the meaning of Article 5 § 1 of the Convention.

106. The Court also agrees with the applicants that they were removed from Azerbaijan to Turkey in circumvention of formal extradition proceedings and of the relevant international safeguards which such proceedings entail. In particular, the first applicant was removed from Azerbaijan in the absence of any formal extradition proceedings and the other applicants could not benefit from the protection afforded by such proceedings. In that connection, the Court cannot overlook the fact that the third and fourth applicants were removed to Turkey while their extradition proceedings were still pending and that the second applicant was removed to Turkey despite the Baku Court of Serious Crimes' decision of 12 July 2018, holding that he should not be extradited to Turkey. In these circumstances, the Court cannot but conclude that the removal of the applicants was in fact



a disguised extradition from Azerbaijan to Turkey and their deprivation of liberty had been part of an extra-legal transfer of persons which circumvented all guarantees offered to them by domestic and international law (compare *Ozdil and Others*, cited above, § 57).

107. Having regard to its above findings and the material in its possession, the Court considers that the applicants' deprivation of liberty was not in compliance with Article 5 § 1 of the Convention. Accordingly, there has been a breach of that provision.

## V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

108. The applicants complained that their forcible removal to Turkey was in breach of Article 3 of the Convention, given the real risk of ill-treatment to which they would be subjected there. Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

### A. Admissibility

109. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### B. Merits

#### 1. *The parties' submissions*

110. The applicants argued that, based on their personal circumstances and available information, their forcible removal to Turkey had been in violation of Article 3 of the Convention.

111. The Government submitted that the applicants had failed to submit any evidence showing that they faced a real risk of ill-treatment in Turkey.

#### 2. *The Court's assessment*

112. The Court would refer to the general principles which have been reiterated in, *inter alia*, *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 77-105, 23 August 2016). In particular, in cases concerning the expulsion of asylum-seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the Geneva Convention relating to the Status of Refugees. Its main concern is whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled. Under Article 1 of the Convention, the primary responsibility for

implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic material as well as by material from other reliable and objective sources such as other Contracting or third States, agencies of the United Nations and reputable non-governmental organisations. Moreover, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. As a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned (*ibid.*, § 84).

113. Turning to the circumstances of the present case, the Court reiterates that it is not disputed that the second, third and fourth applicants applied for asylum in Azerbaijan (compare and contrast, *D v. Bulgaria*, cited above, § 120). As for the first applicant, the respondent Government stated in their submissions that he did not request asylum in Azerbaijan, without providing the Court with any further information whatsoever. However, the Court cannot but note that according to the material submitted by the first applicant, an asylum application was lodged on his behalf with the UNHCR Baku Office, the SMS, the OCD and the State Committee for Affairs of Refugees and Internally Displaced Persons, asking them to grant the first applicant refugee status owing to the risk of his being subjected to persecution and ill-treatment in Turkey. On the same day the UNHCR Baku Office issued a temporary protection letter with respect to the first applicant, his wife and their four children, valid until 7 September 2017, on the basis that they were registered with the UNHCR and their asylum request was under consideration by the national authorities.

114. The Court notes that it has found above that the applicants were subjected to a form of extra-legal transfer from Azerbaijan to Turkey which circumvented all guarantees offered to them by domestic and international law (see paragraph 106 above). In particular, at no point in the domestic proceedings did the national authorities examine the applicants' fears of ill-treatment if returned to Turkey, while the decision to remove them from Azerbaijan based on the cancellation of their passport or residence permits was nothing but a pretext for an extradition in disguise, thus placing them outside the protection of the law.

115. In that connection, the Court points out that no extradition proceedings were at all instituted in respect of the first applicant, the second applicant was removed from Azerbaijan in flagrant violation of the Baku Court of Serious Crimes' decision of 12 July 2018 refusing his extradition, and the third and fourth applicants were removed from Azerbaijan while the

extraditions proceedings were still pending, thus depriving them of the opportunity to effectively challenge the lawfulness of their extradition. The Court also does not lose sight of the fact that the haste with which the applicants were removed from Azerbaijan on the basis of the cancellation of their passport or residence permits deprived them of any possibility to challenge their removal on those grounds before the competent courts (compare *De Souza Ribeiro v. France* [GC], no. 22689/07, § 95, ECHR 2012, and *D v. Bulgaria*, cited above, § 134).

116. In these circumstances, the Court considers that the applicants were denied effective guarantees of protection against arbitrary *refoulement*. Accordingly, the Court finds that the respondent State had failed to discharge its procedural obligation under Article 3 of the Convention to assess the risks of treatment contrary to that provision before removing the applicants from Azerbaijan (compare, *mutatis mutandis*, *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 163, 21 November 2019, and *D v. Bulgaria*, cited above, § 135).

117. These considerations are sufficient for the Court to conclude that there has been a violation of Article 3 of the Convention.

## VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

118. Lastly, the applicants complained under Article 5 § 4 and Article 13 of the Convention that they did not have an effective remedy by which they could have challenged the lawfulness of their detention and expulsion to Turkey. The first applicant also complained that his transfer to Turkey had breached Article 1 of Protocol No. 7 to the Convention.

119. Having regard to its findings under Article 5 § 1 and Article 3 of the Convention, the Court considers that it is not necessary to give a separate ruling on the admissibility and merits of these complaints.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

121. The applicants claimed 30,000 euros (EUR) each in respect of non-pecuniary damage.

122. The Government considered those amounts to be excessive and unsubstantiated.

123. The Court considers that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant the sum of EUR 9,000 under this head, plus any tax that may be chargeable on this amount.

**B. Costs and expenses**

124. The applicants did not make any claim under this head. The Court therefore makes no award.

**C. Default interest**

125. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Rejects* the Government's request to strike application no. 41326/17 out of the Court's list of cases;
3. *Declares* the complaints under Articles 3 and 5 § 1 of the Convention admissible;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
5. *Holds* that there has been a violation of Article 3 of the Convention;
6. *Holds* that there is no need to examine separately the admissibility and merits of the remaining complaints;
7. *Holds*
  - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik  
Registrar

Síofra O'Leary  
President

## APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Date of birth Nationality	Represented by
1.	41326/17	Shenturk v. Azerbaijan	09/06/2017	<b>Taci SHENTURK</b> 10/07/1976 Turkish	Asima Nasirli Samad Rahimli
2.	8098/18	Ozdemir v. Azerbaijan	12/02/2018	<b>Isa OZDEMIR</b> 07/02/1971 Turkish	Asima Nasirli
3.	8147/18	Seferoglu v. Azerbaijan	13/02/2018	<b>Ayhan SEFEROGLU</b> 01/07/1973 Turkish	Asima Nasirli
4.	8384/18	Taylan v. Azerbaijan	14/02/2018	<b>Erdogan TAYLAN</b> 25/08/1974 Turkish	Asima Nasirli