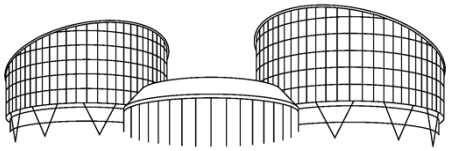

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SHUKUROV v. AZERBAIJAN

(Application no. 37614/11)

JUDGMENT

STRASBOURG

27 October 2016

FINAL

27/01/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Shukurov v. Azerbaijan,

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

Angelika Nußberger, *President*,
Khanlar Hajiyev,
André Potocki,
Faris Vehabović,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits, *judges,*

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 4 October 2016,

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

PROCEDURE

1. The case originated in an application (no. 37614/11) 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 an Azerbaijani national, Mr Aydin Oktay oglu Shukurov (*Aydın Oktay oğlu Şükürov* – "the applicant"), on 1 June 2011.

2. The applicant was represented by Mr I. Aliyev, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that the election in his electoral constituency had not been free and fair owing to numerous instances of electoral fraud. His right to stand for election had been infringed on account of the relevant authorities' failure to deal effectively with his complaints concerning election irregularities.

4. On 9 December 2013 the application was communicated to the Government. The applicant and the Government each submitted written observations on the admissibility and merits of the case. Observations were also received from the International Commission of Jurists (the ICJ), to whom the President had given leave to intervene as a third party in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Baku.

A. Domestic proceedings concerning the applicant's election-related complaints

6. The circumstances of the case are similar to those in *Gahramanli and Others v. Azerbaijan* (no. 36503/11, §§ 6-32, 8 October 2015).

7. The applicant was nominated by the Classic wing of the Popular Front party to stand as a candidate in the parliamentary elections of 7 November 2010 in the single-mandate Zangilan-Gubadly Electoral Constituency No. 125. The applicant lost the election in his constituency.

8. After election day, the applicant lodged a complaint with the Central Electoral Commission (the "CEC") concerning a number of irregularities in his constituency that had allegedly taken place during election day. He complained of various types of irregularity, including interference by public officials, illegal campaigning, obstruction and intimidation of election observers, ballot-box stuffing, repeated voting by the same individuals, incorrect vote-counting procedures, and a falsely inflated voter turnout. In support of his allegations, the applicant submitted various types of evidence documenting specific instances of the irregularities complained of, including statements made by election observers, and video and audio recordings.

9. On 20 November 2010 the CEC issued a decision rejecting the applicant's claims. Its reasoning was similar to that in the CEC decision in *Gahramanli and Others* (cited above, §§ 21-26).

10. The applicant lodged further complaints with the Baku Court of Appeal and the Supreme Court which, on 24 November and 1 December 2010 respectively, dismissed the applicant's appeals. Their reasoning was similar to that in their respective decisions in the *Gahramanli and Others* case (cited above, §§ 27-32).

11. In the meantime, before the Supreme Court delivered its final decision in the applicant's case, on 29 November 2010 the Constitutional Court had confirmed the country-wide election results, including the election results in the applicant's constituency, as final (ibid., § 30).

B. Court proceedings and seizure of the applicant's case file

12. At the material time Mr Intigam Aliyev was representing not only the applicant in the present case, but also a total of twenty-seven other

applicants in cases concerning the 2010 parliamentary elections and a number of applicants in other cases before the Court.

13. On 8 August 2014 criminal proceedings were instituted against Mr I. Aliyev, which are the subject of a separate application brought by him before the Court (application no. 68762/14). On 8 and 9 August 2014 the investigation authorities seized a large number of documents from Mr I. Aliyev's office, including all the case files relating to the proceedings pending before the Court, which were in Mr Aliyev's possession and which concerned over 100 applications in total. The file relating to the present application was also seized in its entirety. The facts relating to the seizure and the relevant proceedings are described in more detail in *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 21-28, 22 October 2015).

14. On 25 October 2014 the investigation authorities returned a number of the case files concerning the applications lodged before the Court, including the file relating to the present application, to Mr Aliyev's lawyer.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

15. The relevant domestic law and international documents concerning, *inter alia,* the system of electoral commissions and procedures for examination of electoral disputes, as well as observations made during the 2010 parliamentary elections in Azerbaijan, are summarised in *Gahramanli and Others* (cited above, §§ 33-51).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

16. Relying on Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicant complained that, in the electoral constituency where he had run for parliamentary election, there had been a number of serious irregularities and breaches of electoral law which had made it impossible to determine the true opinion of voters and had thus infringed his right to stand as a candidate in free elections. The domestic authorities, including the electoral commissions and courts, had failed to properly examine his complaints and to investigate his allegations concerning the aforementioned irregularities and breaches of electoral law. In particular, the examination of his appeal by the Supreme Court had been deprived of all effectiveness because the election results had already been approved by the Constitutional Court.

17. Having regard to the special features of the present case, the Court considers that this complaint falls to be examined only under Article 3 of Protocol No. 1 to the Convention and that no separate examination is necessary under Article 13. Article 3 of Protocol No. 1 reads:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A. Admissibility

18. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

19. The submissions made by the applicant and the Government were similar to those made by the relevant parties in respect of the similar complaint raised in the case of *Gahramanli and Others v. Azerbaijan* (no. 36503/11, §§ 58-65, 8 October 2015).

2. The Court's assessment

20. Having regard to the facts of the present case and their clear similarity to those of the *Gahramanli and Others* case on all relevant and crucial points, the Court sees no particular circumstances that could compel it to deviate from its findings in that judgment, and finds that in the present case the applicant's right to stand as a candidate was breached for the same reasons as provided in that judgment, namely that the applicant's complaints concerning election irregularities were not effectively addressed at domestic level (see *Gahramanli and Others*, cited above, §§ 66-88).

21. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

22. By means of a fax of 9 September 2014 Mr I. Aliyev, the applicant's representative, introduced a new complaint on behalf of the applicant. He claimed that the seizure from his office of the entire case file relating to the applicant's pending case before the Court, together with all the other case files, had amounted to a hindrance to the exercise

of the applicant's right of individual application under Article 34 of the Convention, the relevant parts of which read as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

23. The submissions made by the applicant, the Government and the third party, the International Commission of Jurists (ICJ), were identical to those made by the relevant parties in respect of the same complaint raised in *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 57-63, 22 October 2015).

B. The Court's assessment

24. In *Annagi Hajibeyli*, having examined an identical complaint based on the same facts, the Court found that the respondent State had failed to comply with its obligations under Article 34 of the Convention (ibid., §§ 64-79). The Court considers that the analysis and finding it made in the *Annagi Hajibeyli* judgment also apply to the present case and sees no reason to deviate from the finding that the deprivation of access for the applicant and his lawyer to their copy of the case file constituted in itself an undue interference and a serious hindrance to the effective exercise of the applicant's right of individual application.

25. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 20,000 Azerbaijani manats (AZN) in respect of non-pecuniary damage. The claim was submitted on 29 May 2014.

28. The Government submitted their comments on the claim on 11 July 2014. They submitted that, as of 10 July 2014, according to the exchange rate of the Central Bank of the Republic of Azerbaijan, one euro (EUR)

equalled AZN 1.0703. The Government further submitted that the claim was excessive and considered that EUR 7,500 would be a reasonable award in respect of non-pecuniary damage.

29. On 28 June 2016, in a letter unrelated to the present case, the Government informed the Court that, in 2015, the rate of the national currency in relation to the euro had fallen significantly and requested the Court to take this circumstance into consideration when dealing with just satisfaction claims expressed in the national currency.

30. The Court considers that the applicant sustained non-pecuniary damage which cannot be compensated for by the mere finding of a breach of the Convention and Protocol No. 1.

31. The Court notes that the national currency has significantly depreciated since the time the applicant submitted the claim. When the present judgment was adopted, one euro was worth approximately AZN 1.85. The question therefore arises as to what exchange rate should be taken into account when assessing the applicant's claim.

32. In principle, claims in respect of pecuniary damage and costs and expenses are made on the basis of a precise calculation and, therefore, require conversion into euros before an award can be made. On the other hand, an award in respect of non-pecuniary damage can only be "equitable", since such damage does not lend itself to calculation. Even so, inasmuch as the Court bases its decision on the applicant's actual claims because it cannot make an award *ultra petitum*, claims in respect of non-pecuniary damage expressed in a currency other than the euro should be converted into euros before the Court decides on an equitable basis.

33. The Court reiterates that the applicant should be placed, as far as possible, in the same situation he or she would have been in had the violation not occurred (see, *mutatis mutandis*, *Prodan v. Moldova*, no. 49806/99, § 70, ECHR 2004-III (extracts)). As a general practice, in cases where just satisfaction claims (under various heads) were made in the national currency, the Court has converted them into euros as of the date of submission of the claims (see, for example, *Soner and Others v. Turkey*, no. 40986/98, § 58, 27 April 2006; *Dilek and Others v. Turkey*, nos. 74611/01, 26876/02 and 27628/02, § 76, 17 July 2007; *Altındağ and İpek v. Turkey*, no. 42921/02, § 25, 20 October 2009; *Petrenco v. Moldova*, no. 20928/05, § 73, 30 March 2010; *Güveç v. Turkey*, no. 70337/01, § 141, ECHR 2009 (extracts); and *Ciechońska v. Poland*, no. 19776/04, §§ 85 and 88, 14 June 2011).

34. The Court finds that, as a general rule, it is appropriate to follow the above-mentioned approach both in cases where a claim has lost considerable value when the Court reaches its decision and where it has remained stable while the case has been pending. Accordingly, in the present case, in respect of the applicant's claims under all heads, the

conversion rate to be used should be the rate applicable on the date on which the claim was submitted.

35. Therefore, as per the exchange rate of the date on which the claim was submitted, the applicant claimed approximately EUR 18,700 in respect of non-pecuniary damage.

36. Ruling on an equitable basis, the Court awards the applicant EUR 10,000 under that head, plus any tax that may be chargeable.

B. Costs and expenses

37. The applicant also claimed AZN 2,500 (approximately EUR 2,340 at the time of submission of the claim) for legal fees incurred before the Court, AZN 300 (approximately EUR 280) for translation expenses and AZN 70 (approximately EUR 65) for postal expenses.

38. The Government submitted that the claims were excessive and were not fully itemised and supported by relevant documents. Moreover, given that the applicant had been represented by the same lawyer, who had also represented other applicants in similar cases involving similar submissions, the Government argued that he should be awarded a reduced amount.

39. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant was represented by Mr I. Aliyev in the proceedings before the Court and that substantial parts of the lawyer's submissions were similar to those he had made in a number of other similar applications. Having regard to that circumstance, as well as to the documents in its possession and to its case-law (including the principles reiterated in paragraphs 33 and 34 above which apply to costs and expenses in the same way), the Court considers it reasonable to award the applicant EUR 1,000, covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

40. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

3. *Holds* that the respondent State has failed to comply with its obligation under Article 34 of the Convention;

4. *Holds*,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President