



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

FIFTH SECTION

CASE OF MAMMADLI AND OTHERS v. AZERBAIJAN

(Applications nos. 2326/11, 8055/11, 25355/11 and 30750/11)

JUDGMENT

STRASBOURG

30 June 2016

This judgment is final but it may be subject to editorial revision.

In the case of Mammadli and Others v. Azerbaijan,

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

Faris Vehabović, *President*,

Khanlar Hajiyeu,

Carlo Ranzoni, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 7 June 2016,

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

PROCEDURE

1. The case originated in four applications (nos. 2326/11, 8055/11, 25355/11 and 30750/11) 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 four Azerbaijani nationals, Mr Nuraddin Musa oglu Mammadli, Ms Duniyakhani Jahan qizi Jarullayeva, Mr Nobatali Gulam oglu Palangov and Mr Iltizam Nizam oglu Akbarli (“the applicants”), on various dates in 2011.

2. Mr Mammadli, Ms Jarullayeva and Mr Akbarli (applications nos. 2326/11, 8055/11 and 30750/11) were represented by Mr I. Aliyev. Mr Palangov (application no. 25355/11) was represented by Mr H. Hasanov. Both representatives were lawyers practicing in Azerbaijan. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. On 29 May 2013 (applications nos. 2326/11 and 8055/11) and on 30 August 2013 (applications nos. 25355/11 and 30750/11) the applications were communicated to the Government. The applicants and the Government each submitted written observations on the admissibility and merits of the case. Observations in respect of applications nos. 2326/11, 8055/11 and 30750/11 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

4. The applicants' dates of birth and places of residence are given in the Appendix.

A. Domestic proceedings concerning refusals to register the applicants as candidates

5. The circumstances of the case are similar to those in *Tahirov v. Azerbaijan* (no. 31953/11, §§ 6-22, 11 June 2015) and *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 6-20, 22 October 2015).

6. The applicants stood as candidates in the parliamentary elections of 7 November 2010 and applied for registration as candidates in various single-mandate electoral constituencies (see Appendix).

7. The respective Constituency Electoral Commissions ("ConECs") on various dates (see Appendix) refused the applicants' requests for registration as a candidate after the ConEC working groups had found that some of the supporting voter signatures submitted by the applicants were invalid and that the remaining valid signatures had numbered fewer than 450, a minimum required by law. Signatures were found to be invalid on several grounds in each case.

8. None of the applicants, except the applicant in application no. 30750/11, were invited to the ConEC meetings where decisions to refuse their requests for registration were taken. In each case, despite the requirements of the law, all the relevant working group documents and the ConEC decision itself were made available to the applicants belatedly or never made available to them.

9. Each applicant lodged a complaint with the Central Electoral Commission ("the CEC") against the ConEC decisions. The points raised in their complaints were similar to those made by the applicants in *Tahirov* (cited above, §§ 13-14) and *Annagi Hajibeyli* (cited above, §§ 11-12).

10. On various dates, the CEC also rejected the applicants' complaints (see Appendix), after another examination of the signature sheets by members of its own working group, which had found in each case that large numbers of signatures were invalid and that the remaining valid signatures were below the minimum required by law.

11. None of the applicants were invited to attend the relevant CEC or working group meetings. Moreover, in each case, all the relevant CEC documents were only made available to the applicants after the CEC decision had been taken.

12. On various dates, each of the applicants lodged an appeal with the Baku Court of Appeal against the decisions of the electoral commissions.

They reiterated the complaints they had made before the CEC concerning the ConEC decisions and procedures. They also raised a number of other points similar to those raised by the applicants in *Tahirov* (cited above, § 19) and *Annagi Hajibeyli* (cited above, § 17).

13. On various dates (see Appendix), the Baku Court of Appeal dismissed appeals by the applicants, finding that their arguments were irrelevant or unsubstantiated and that there were no grounds for quashing the decisions of the CEC.

14. The applicants lodged cassation appeals with the Supreme Court, reiterating their previous complaints and arguing that the Baku Court of Appeal had not carried out a fair examination of the cases and had delivered unreasoned judgments.

15. On various dates (see Appendix), the Supreme Court dismissed the applicants' appeals as unsubstantiated, without examining their arguments in detail, and found no grounds to doubt the findings of the electoral commissions or of the Baku Court of Appeal.

B. The Court proceedings and seizure of the applicants' case file in applications nos. 2326/11, 8055/11 and 30750/11

16. In addition to the applicants in the present cases, at the material time Mr Intigam Aliyev, the applicants' representative in applications nos. 2326/11, 8055/11 and 30750/11, was representing a total of twenty-seven applicants in cases concerning the 2010 parliamentary elections and a number of applicants in other cases before the Court.

17. 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 pending proceedings before the Court, which were in Mr Aliyev's possession and which concerned over 100 applications in total. The files relating to applications nos. 2326/11, 8055/11 and 30750/11 were also seized in their entirety. The facts relating to the seizure and the relevant proceedings are described in more detail in *Annagi Hajibeyli* (cited above, §§ 21-28).

18. 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 applications nos. 2326/11, 8055/11 and 30750/11, to Mr Aliyev's lawyer.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

19. The relevant domestic law and international documents concerning the rules and requirements for candidate registration, as well as observations made during the 2010 parliamentary elections in Azerbaijan, are summarised in *Tahirov* (cited above, §§ 23-31).

THE LAW

I. JOINDER OF THE APPLICATIONS

20. The Court considers that, in accordance with Rule 42 § 1 of the Rules of Court, the applications should be joined, given their similar factual and legal background.

II. THE GOVERNMENT'S REQUEST FOR THE APPLICATIONS TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

21. The Government submitted unilateral declarations with a view to resolving the issues raised by the present applications. They further requested that the Court strike the applications out of the list of cases in accordance with Article 37 of the Convention.

22. The applicants disagreed with the terms of the unilateral declarations and requested the Court to continue its examination of the applications.

23. Having studied the terms of the Government's unilateral declarations, the Court considers – for the reasons stated in the *Tahirov* judgment (ibid., §§ 33-40), which are equally applicable to the present cases and from which the Court sees no reason to deviate – that the proposed declarations do 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 the present applications.

24. Therefore, the Court refuses the Government's request for it to strike the applications 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 cases.

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

25. The applicants complained under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention that their right to stand as a

candidate in free elections had been violated because their requests for registration as candidates had been refused arbitrarily. 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 (compare *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 57, 8 April 2010). Article 3 of Protocol No. 1 to the Convention reads as follows:

“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

26. 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

27. The submissions made by the applicants and the Government were similar to those made by the relevant parties in respect of the similar complaint raised in the cases of *Tahirov* (cited above, §§ 45-52) and *Annagi Hajibeyli* (cited above, §§ 43-49).

2. The Court's assessment

28. The Court refers to the summaries of its case-law made in the *Tahirov* judgment (cited above, §§ 53-57), which are equally pertinent to the present applications.

29. For the purposes of the present complaint, the Court is prepared to accept the Government's submission that the requirement for collecting 450 supporting signatures for nomination as a candidate pursued the legitimate aim of reducing the number of fringe candidates.

30. It remains to be seen whether, in the present case, the procedures for monitoring compliance with this eligibility condition were conducted in a manner affording sufficient safeguards against an arbitrary decision.

31. Having regard to the material in the case files and the parties' submissions, the Court notes that the issues raised by the present complaint are essentially the same as those examined in the *Tahirov* judgment. The facts of both the *Tahirov* case and the present case are similar to a significant degree. The Court considers that the analysis and conclusions it made in the *Tahirov* judgment also apply to the present case. In particular,

the Court noted the existence of serious concerns regarding the impartiality of the electoral commissions, a lack of transparency in their actions, and various shortcomings in their procedures (ibid., §§ 60-61); a lack of clear and sufficient information about the professional qualifications and the criteria for the appointment of working-group experts charged with the task of examining signature sheets (ibid., §§ 63-64); failure by the electoral commissions and courts to take any further investigative steps to confirm the experts' opinions on the authenticity or otherwise of signatures (ibid., § 65); systematic failure by the electoral commissions to abide by a number of statutory safeguards designed to protect nominated candidates from arbitrary decisions (ibid., §§ 66-68 and 69); failure by the electoral commissions and courts to take into account the relevant and substantial evidence submitted by the candidate in an attempt to challenge the findings of the working-group experts on the authenticity or otherwise of signatures (ibid., § 69); and the failure by the domestic courts to deal with appeals in an appropriate manner (ibid., § 70). Having regard to the above, the Court found that, in practice, the applicant in the *Tahirov* judgment had not been afforded sufficient safeguards to prevent an arbitrary decision to refuse his registration as a candidate.

32. Having regard to the facts of the present case and their clear similarity to those of the *Tahirov* 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 each applicant's right to stand as a candidate was breached for the same reasons as those outlined above.

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

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

34. The applicant in application no. 25355/11 also complained under Article 14 of the Convention, in conjunction with the above complaint, that he had been discriminated against on the ground of his opposition-oriented political views. Article 14 provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

35. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

36. However, having regard to its above finding in relation to Article 3 of Protocol No. 1, the Court considers that it is not necessary to examine whether in this case there has been a violation of Article 14 (compare *Tahirov*, cited above, § 75).

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

37. By a fax of 9 September 2014 Mr I. Aliyev, the representative of the applicants in applications nos. 2326/11, 8055/11 and 30750/11, introduced a new complaint on behalf of those applicants, arguing that the seizure from his office of the entire case files relating to the applicants' pending cases before the Court, together with all the other case files, had amounted to a hindrance to the exercise of the applicants' 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

38. The submissions made by the applicants, 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 the case of *Annagi Hajibeyli*, cited above, §§ 57-63).

B. The Court's assessment

39. 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 cases and sees no reason to deviate from that finding.

40. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention in respect of applications nos. 2326/11, 8055/11 and 30750/11.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. Each applicant in applications nos. 2326/11, 8055/11 and 30750/11 claimed 20,000 Azerbaijani new manats (AZN) (approximately 18,600 euros (EUR) at the time of submission of the claims) in respect of non-pecuniary damage. The applicant in application no. 25355/11 claimed EUR 100,000 in respect of non-pecuniary damage.

43. The Government noted that the claims were excessive and considered that EUR 7,500 to each applicant would be a reasonable award in respect of non-pecuniary damage.

44. Ruling on an equitable basis, the Court awards each applicant the sum of EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

45. The applicants also claimed the following amounts in respect of the costs and expenses:

- Mr Nuraddin Mammadli (application no. 2326/11) claimed AZN 3,000 (approximately EUR 2,800) for legal fees incurred before the Court, AZN 400 (approximately EUR 370) for translation expenses and AZN 100 (approximately EUR 93) for postal expenses;

- Ms Duniyakhanim Jarullayeva (application no. 8055/11) claimed AZN 3,000 (approximately EUR 2,800) for legal fees incurred before the Court, AZN 600 (approximately EUR 560) for translation expenses and AZN 100 (approximately EUR 93) for postal expenses;

- Mr Nobatali Panangov (application no. 25355/11) claimed EUR 1,600 for legal fees incurred before the Court;

- Mr Iltizam Akbarli (application no. 30750/11) claimed AZN 1,500 (approximately EUR 1,400) for legal fees incurred before the domestic courts, EUR 2,500 for legal fees incurred before the Court, AZN 300 (approximately EUR 280) for translation expenses and AZN 70 (approximately EUR 65) for postal expenses.

46. The Government submitted that the claims were excessive and were not fully supported by relevant documents. Moreover, given the fact that three of the applicants were represented by the same lawyer, the Government argued they should be awarded a total amount jointly. As to Mr Palangov (application no. 25355/11), the Government argued that he should be awarded a reduced amount because he was represented by a

lawyer who also represented other applicants in similar cases involving similar submissions.

47. The Court notes that all the applicants were represented either by Mr I. Aliyev or Mr H. Hasanov in the proceedings before the Court and that substantial parts of each lawyer's submissions were similar to those they 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, the Court considers it reasonable to award a total sum of EUR 3,000 to the applicants in applications nos. 2326/11, 8055/11 and 30750/11 jointly, and EUR 1,000 to the applicant in application no. 25355/11, covering costs under all heads, plus any tax that may be chargeable to the applicants.

C. Default interest

48. 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 the applications out of the Court's list of cases;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;
5. *Holds* that there is no need to examine the complaint under Article 14 of the Convention raised by the applicant in application no. 25355/11;
6. *Holds* that the respondent State has failed to comply with its obligation under Article 34 of the Convention in respect of applications nos. 2326/11, 8055/11 and 30750/11;
7. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into Azerbaijani new manats at the rate applicable at the date of settlement:

- (i) EUR 10,000 (ten thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants, to the applicants in applications nos. 2326/11, 8055/11 and 30750/11 jointly, in respect of costs and expenses, to be paid directly into their representative's bank account;
- (iii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, to the applicant in application no. 25355/11, in respect of costs and expenses, to be paid directly into his representative's bank account;
- (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 30 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Faris Vehabović
President

APPENDIX

No.	Application no.	Lodged on	Applicant name year of birth place of residence	Represented by	Electoral constituency and the nominating body	Electoral commissions' decisions	Domestic courts' decisions
1	2326/11	23/12/2010	Nuraddin MAMMADLI 1946 Gadabay	Intigam ALIYEV	Narimanov-Nizami Electoral Constituency No. 18, nominated by the coalition of the Popular Front Party of Azerbaijan (PFPA) and Musavat parties	ConEC decision of 12/10/2010; CEC decision of 19/10/2010	Baku Court of Appeal judgment of 28/10/2010; Supreme Court decision of 03/11/2010
2	8055/11	22/01/2011	Dunyakhanim JARULLAYEVA 1960 Ismayilli	Intigam ALIYEV	Ismayilli Electoral Constituency No. 86, nominated by the PFPA-Musavat	ConEC decision of 07/10/2010; CEC decision of 14/10/2010	Baku Court of Appeal judgment of 25/10/2010; Supreme Court decision of 01/11/2010
3	25355/11	12/04/2011	Nobatali PALANGOV 1952 Lerik	Hafiz HASANOV	Lerik Electoral Constituency No. 78, nominated by the PFPA-Musavat	ConEC decision of 29/09/2010; CEC decision of 12/10/2010	Baku Court of Appeal judgment of 18/10/2010; Supreme Court decision of 25/10/2010
4	30750/11	04/05/2011	Iltizam AKBARLI 1957 Imishli	Intigam ALIYEV	Imishli Electoral Constituency No. 79, nominated by the PFPA-Musavat	ConEC decision of 13/10/2010; CEC decision of 18/10/2010	Baku Court of Appeal judgment of 29/10/2010; Supreme Court decision of 05/11/2010