



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

FIFTH SECTION

CASE OF SAMADBAYLI AND OTHERS v. AZERBAIJAN

(Applications nos. 36821/11 and 9 others – see appended list)

JUDGMENT

STRASBOURG

13 April 2017

This judgment is final. It may be subject to editorial revision.

In the case of Samadbayli and Others v. Azerbaijan,

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

Erik Møse, *President*,

Yonko Grozev,

Lətif Hüseynov, *judges*,

and Anne-Marie Dougin, *Acting Deputy Section Registrar*,

Having deliberated in private on 21 March 2017,

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

PROCEDURE

1. The case originated in ten applications (nos. 36821/11, 37656/11, 37661/11, 37740/11, 37866/11, 38636/11, 38885/11, 41066/11, 42345/11 and 42360/11) 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 ten Azerbaijani nationals, Mr Arzu Habib oğlu Samadbayli, Mr Yagub Mahammad oğlu Babali, Ms Leyla İlgar qızı Mustafayeva, Mr Soltanhamid Hilal oğlu Malikov, Mr Ali Amirhüseyn oğlu Kerimli, Mr Giyas Boyukaga oğlu Sadıgov, Ms Sitara Mehdi qızı Zeynalova, Mr Panah Chodar oğlu Hüseyn, Mr Adil Abulfat oğlu Geybullayev, and Mr İsa Yunis oğlu Gambar (“the applicants”), on various dates in 2011.

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

3. On 15 October 2013 (application no. 36821/11), on 18 November 2013 (applications nos. 37656/11, 37661/11, 37740/11, 37866/11, 38636/11 and 38885/11) and on 9 December 2013 (applications nos. 41066/11, 42345/11 and 42360/11) 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 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' years of birth and places of residence are listed in the Appendix.

A. Domestic proceedings concerning the applicants' election-related complaints

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

6. The applicants were independent self-nominated or opposition candidates in the parliamentary elections of 7 November 2010 (see Appendix). All the applicants lost the elections in their respective constituencies.

7. After election day, the applicants lodged complaints with the Central Electoral Commission ("the CEC") concerning a number of irregularities in their respective constituencies that had allegedly taken place during and/or before election day. Some of them also lodged identical complaints with the respective Constituency Electoral Commissions ("the ConECs"). They complained about various types of irregularities, including interference by public officials, illegal campaigning, obstruction and intimidation of election observers, ballot-box stuffing, repeated voting by the same individuals, irregularities in applying election ink, incorrect vote-counting procedures, inconsistencies in precinct election results records indicating a falsely inflated voter turnout, and so on. In support of their allegations, the applicants submitted various types of evidence documenting specific instances of the irregularities complained of, including statements made by election observers, video recordings and photographs.

8. The applicants who lodged a complaint with the respective ConECs did not receive any reply from them (except in applications nos. 36821/11, 37656/11, 37740/11, 41066/11 and 42360/11). All of the applicants' complaints were examined by the CEC which, on various dates (see Appendix), issued decisions rejecting the applicants' claims, providing reasoning similar to that in the CEC decision in *Gahramanli and Others* (cited above, §§ 21-26).

9. The applicants lodged further complaints with the Baku Court of Appeal and the Supreme Court which, on various dates (see Appendix), dismissed the applicants' appeals, providing reasoning similar to that in their respective decisions in *Gahramanli and Others* (cited above, §§ 27-32).

10. In the meantime, however – and before the Supreme Court delivered its final decision concerning each complaint (except in application

no. 42345/11) – on 29 November 2010 the Constitutional Court confirmed the countrywide election results, including the election results in the applicants' constituencies, as final (*ibid.*, § 30).

B. Court proceedings and seizure of the applicants' case files

11. At the material time Mr Intigam Aliyev was representing not only the applicants in the present cases, but 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.

12. On 8 August 2014 criminal proceedings were instituted against Mr I. Aliyev, these being 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, comprising over 100 applications in total. The files relating to the present applications were also seized in their 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).

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

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

14. 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, §§ 33-50).

THE LAW

I. JOINDER OF THE APPLICATIONS

15. 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 APPLICATIONS Nos. 36821/11, 37656/11, 37661/11, 37740/11, 37866/11, 38636/11 AND 38885/11 TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

16. The Government submitted unilateral declarations with a view to resolving the issues raised by the above-mentioned applications. They further requested that the Court strike these applications out of the list of cases, in accordance with Article 37 of the Convention.

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

18. Having studied the terms of the Government's unilateral declarations, the Court considers – for the reasons stated in *Tahirov v. Azerbaijan* (no. 31953/11, §§ 32-42, 11 June 2015) and *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 30-40, 22 October 2015), 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.

19. The Court therefore 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

20. Relying on Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicants complained that in the electoral constituencies where they 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 the voters and had thus infringed their right to stand as candidates in free elections. The domestic authorities, including the electoral commissions and courts, had failed to properly examine their complaints and to investigate their allegations concerning the aforementioned irregularities and breaches of electoral law. Several of the applicants complained, in particular, that the examination of their appeal by the Supreme Court had been deprived of all effectiveness because the election results had already been confirmed by the Constitutional Court.

21. Having examined 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

22. 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

23. 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 case of *Gahramanli and Others* (cited above, §§ 58-65).

2. The Court's assessment

24. Having considered the facts of the present case and in view of their clear similarity to the facts in the *Gahramanli and Others* on all relevant and crucial points, the Court sees no particular circumstances that could persuade 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 provided in that judgment, namely that the applicants' complaints concerning election irregularities were not effectively addressed at domestic level (see *Gahramanli and Others*, cited above, §§ 71-88).

25. 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

26. In conjunction with the above complaint, the applicants in applications nos. 37866/11 and 42360/11 also complained that opposition-oriented candidates, like themselves, had been discriminated against by various means by all the State executive authorities, electoral commissions, courts and Government-controlled media throughout the entire electoral process. They relied on Article 14 of the Convention, which provides:

“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.”

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

28. However, in the light of its above finding concerning 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 *Gahramanli and Others*, cited above, §§ 89-91).

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

29. In a fax dated 9 September 2014 Mr I. Aliyev, the applicants’ representative, introduced a new complaint on behalf of the applicants. He claimed that the seizure from his office of all case files relating to the applicants’ pending cases before the Court, together with all his 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

30. 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 *Annagi Hajibeyli v. Azerbaijan* (cited above, §§ 57-63).

B. The Court’s assessment

31. 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 the finding 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 applicants and their lawyer to their copies of the case files constituted in itself an undue interference and a serious hindrance to the effective exercise of the applicants’ right of individual petition.

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. Each applicant in applications nos. 36821/11, 37656/11, 37661/11, 37740/11, 38636/11, 38885/11 and 42345/11 claimed 20,000 Azerbaijani manats (AZN) (approximately 18,600 euros (EUR) at the time of submission of the claims) in respect of non-pecuniary damage. Each applicant in applications nos. 37866/11 and 42360/11 claimed AZN 50,000 (approximately EUR 46,500 at the time of submission of the claims) in respect of non-pecuniary damage. The applicant in application no. 41066/11 claimed AZN 40,000 (approximately EUR 37,200 at the time of submission of the claim) in respect of non-pecuniary damage. All claims were submitted between 5 April and 2 June 2014.

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

36. 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

37. Each applicant also claimed AZN 2,500 (approximately EUR 2,325 at the time of submission of the claims) for legal fees incurred before the Court, AZN 300 (approximately EUR 280 at the time of submission of the claims) for translation expenses and AZN 70 (approximately EUR 65 at the time of submission of the claims) for postal expenses. All claims were submitted between 5 April and 2 June 2014.

38. The Government submitted that the claims were excessive and were not fully supported by relevant documents. Moreover, given the fact that the applicants were represented by the same lawyer as had represented other applicants in similar cases involving similar and/or repetitive submissions, the Government argued they should be awarded a reduced amount.

39. The Court notes that all the applicants were represented by Mr I. Aliyev in the proceedings before the Court and that substantial parts of the lawyer's submissions were similar to those made in a number of other similar applications. Taking into account that circumstance, as well as the documents in its possession and to its case-law, the Court considers it reasonable to award a total sum of EUR 10,000 to all the applicants jointly, to be paid directly into the representative's bank account, covering costs under all heads, plus any tax that may be chargeable to the applicants.

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. *Decides* to join the applications;
2. *Rejects* the Government's request to strike applications nos. 36821/11, 37656/11, 37661/11, 37740/11, 37866/11, 38636/11 and 38885/11 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 in applications nos. 37866/11 and 42360/11;
6. *Holds* that the respondent State has failed to comply with its obligation under Article 34 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicants within three months 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, to each applicant, in respect of non-pecuniary damage;
 - (iii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicants, to all the applicants jointly, in respect

of costs and expenses, to be paid directly into their 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 13 April 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin
Acting Deputy Registrar

Erik Møse
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 after election day	Domestic courts' decisions
1	36821/11	27/05/2011	Arzu SAMADBAYLI 1962 Baku	Intigam ALIYEV	Binagadi First Electoral Constituency No. 8, nominated by the coalition of the Popular Front Party of Azerbaijan (PFPA) and Musavat parties	CEC decision of 20/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 30/11/2010
2	37656/11	01/06/2011	Yagub BABALI 1961 Agsu	Intigam ALIYEV	Agsu-Ismayilli Electoral Constituency No. 87, nominated by PFPA-Musavat	CEC decision of 20/11/2010	Baku Court of Appeal judgment of 25/11/2010; Supreme Court decision of 02/12/2010
3	37661/11	27/05/2011	Leyla MUSTAFAYEVA 1983 Baku	Intigam ALIYEV	Gazakh Electoral Constituency No. 107, self- nominated	CEC decision of 20/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 30/11/2010
4	37740/11	03/06/2011	Soltanhamid MALIKOV 1957 Baku	Intigam ALIYEV	Neftchala Electoral Constituency No. 61, self- nominated	CEC decision of 21/11/2010	Baku Court of Appeal judgment of 26/11/2010; Supreme Court decision of 03/12/2010
5	37866/11	26/05/2011	Ali KERIMLI 1965 Baku	Intigam ALIYEV	Surakhany Second Electoral Constituency No. 31, nominated by PFPA-Musavat	CEC decision of 21/11/2010	Baku Court of Appeal judgment of 25/11/2010; Supreme Court decision of 30/11/2010
6	38636/11	31/05/2011	Giyas SADIGOV 1960 Baku	Intigam ALIYEV	Sabirabad First Electoral Constituency No. 47, nominated by the Classic wing of PFPA	CEC decision of 21/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 01/12/2010

7	38885/11	07/06/2011	Sitara ZEYNALOVA 1959 Baku	Intigam ALIYEV	Khatai Fourth Electoral Constituency No. 36, self- nominated	CEC decision of 20/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 07/12/2010
8	41066/11	01/06/2011	Panah HUSEYN 1957 Baku	Intigam ALIYEV	Nasimi Second Electoral Constituency No. 22, nominated by the Classic wing of PFPA	CEC decision of 21/11/2010	Baku Court of Appeal judgment of 25/11/2010; Supreme Court decision of 01/12/2010
9	42345/11	26/05/2011	Adil GEYBULLA 1962 Baku	Intigam ALIYEV	Shaki Villages Second Electoral Constituency No. 115, nominated by PFPA- Musavat	CEC decision of 19/11/2010	Baku Court of Appeal judgment of 22/11/2010; Supreme Court decision of 26/11/2010
10	42360/11	25/05/2011	Isa GAMBAR 1957 Baku	Intigam ALIYEV	Yasamal First Electoral Constituency No. 15, nominated by PFPA-Musavat	CEC decision of 20/11/2010	Baku Court of Appeal judgment of 25/11/2010; Supreme Court decision of 01/12/2010