



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

FIFTH SECTION

**CASE OF ASLAN ISMAYILOV AND OTHERS v. AZERBAIJAN**

*(Applications nos. 20411/11 and 11 others – see appended list)*

JUDGMENT

STRASBOURG

13 April 2017

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



**In the case of Aslan Ismayilov 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, *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 twelve applications (nos. 20411/11, 20443/11, 24070/11, 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11, 36230/11, 37554/11 and 39042/11) 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 twelve Azerbaijani nationals, Mr Aslan Ziyaddin oglu Ismayilov, Mr Tofig Rashid oglu Yagublu, Mr Sardar Jalal oglu Mammadov, Mr Bakhtiyar Ilyas oglu Hajiyev, Mr Ilgar Gasham oglu Huseynli, Mr Nariman Yaman oglu Yahyayev, Ms Gozel Oruj qizi Bayramli, Mr Namat Faiz oglu Aliyev, Mr Salman Mahammad oglu Imanli, Mr Sahib Farman oglu Karimli, Mr Ilham Gasham oglu Huseynli and Mr Ikram Israyil oglu Israfil (“the applicants”), on various dates in 2011.

2. The applicants were represented by Mr A. Alizade (applications nos. 20411/11 and 20443/11), Mr F. Agayev (application no. 24070/11), Mr H. Hasanov (applications nos. 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11, 36230/11 and 37554/11) and Mr R. Mustafayev (application no. 39042/11), lawyers practising in Azerbaijan. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. On 30 August 2013 (application no. 20411/11), 15 October 2013 (applications nos. 20443/11, 24070/11, 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11 and 36230/11), 18 November 2013 (application no. 37554/11) and 9 December 2013 (application no. 39042/11) the applications were communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicants' years of birth and places of residence are listed in the Appendix.

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 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 ConEC"). They complained about various types of irregularities, including, *inter alia*, 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 relevant ConEC did not receive any reply from those bodies (except in applications nos. 37554/11 and 39042/11). 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, before the Supreme Court delivered its final decision on each complaint, on 29 November 2010 the Constitutional Court had confirmed the countrywide election results, including the election results in the applicants' constituencies, as final (*ibid.*, § 30).

## II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

11. 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

12. 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. 20443/11, 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11, 36230/11 AND 37554/11 TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

13. 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 the applications out of the list of cases in accordance with Article 37 of the Convention.

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

15. 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.

16. 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

17. 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 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. In particular, the examination of their appeal by the Supreme Court had been deprived of all effectiveness because the election results had already been approved by the Constitutional Court.

18. 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

19. 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*

20. 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*

21. 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 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).

22. 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

23. In conjunction with the above complaint, the applicants 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.”

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

25. 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. 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**

###### *1. Pecuniary damage*

27. The applicants claimed the following amounts in respect of pecuniary damage:

- Mr Aslan Ismayilov (application no. 20411/11) claimed 124,400 Azerbaijani manats (AZN) (approximately 116,350 euros (EUR) at the time of submission of the claim (28 February 2014)) in respect of loss of the

earnings he would have received in the form of a parliamentary member's salary if elected to the National Assembly, as well as loss of the money spent on his election campaign;

- Mr Tofig Yagublu (application no. 20443/11) claimed AZN 104,500 (approximately EUR 96,760 at the time of submission of the claim (27 March 2014)) in respect of loss of the earnings he would have received in the form of a parliamentary member's salary if elected to the National Assembly, as well as loss of the money spent on his election campaign;

- Mr Sardar Mammadov (application no. 24070/11) claimed EUR 94,500 in respect of loss of the earnings he would have received in the form of a parliamentary member's salary if elected to the National Assembly;

- Mr Bakhtiyar Hajiyeu, Mr Ilgar Huseynli, Mr Nariman Yahyayev, Ms Gozel Bayramli, Mr Namat Aliyev, Mr Salman Imanli, Mr Sahib Karimli and Mr Ilham Huseynli (applications nos. 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11, 36230/11 and 37554/11, respectively) each claimed EUR 30,000 in respect of loss of the money spent on their election campaigns;

- Mr Ikram Israfil (application no. 39042/11) made no claim in respect of pecuniary damage.

28. The Government noted that the applicants had not provided supporting documents and that, in any event, there was no causal link between the violation found and the pecuniary damage alleged.

29. As to the claims in respect of loss of a parliamentary member's salary, the Court notes that it cannot be established with sufficient certainty in the respective applicants' cases that they would necessarily have won the election in their constituencies and become members of parliament, had the violation of their electoral rights not taken place. It is therefore impossible for the Court to speculate as to whether the applicants would have received a member of parliament's salary (see *Mammadov v. Azerbaijan* (no. 2), no. 4641/06, § 68, 10 January 2012).

30. As to the claims in respect of expenses borne during the election campaign, the Court does not discern any causal link between the violation found and the pecuniary damage alleged (*ibid.*, § 69).

31. For the above reasons, the Court rejects the claims in respect of pecuniary damage.

## *2. Non-pecuniary damage*

32. The applicants claimed the following amounts in respect of non-pecuniary damage:

- Mr Aslan Ismayilov (application no. 20411/11) claimed AZN 100,000 (approximately EUR 93,450 at the time of submission of the claim);

- Mr Tofig Yagublu (application no. 20443/11) claimed AZN 30,000 (approximately EUR 27,780 at the time of submission of the claim);



- Mr Sardar Mammadov (application no. 24070/11) claimed EUR 25,000;

- Mr Bakhtiyar Hajiyeu, Mr Ilgar Huseynli, Mr Nariman Yahyayev, Ms Gozel Bayramli, Mr Namat Aliyev, Mr Salman Imanli, Mr Sahib Karimli and Mr Ilham Huseynli (applications nos. 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11, 36230/11 and 37554/11, respectively) claimed EUR 100,000 each;

- Mr Ikram Israfil (application no. 39042/11) claimed EUR 10,000.

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

34. 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**

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

- Mr Aslan Ismayilov (application no. 20411/11) claimed AZN 2,500 (approximately EUR 2,335 at the time of submission of the claim) for legal fees incurred before the Court and AZN 450 (approximately EUR 420) for translation expenses;

- Mr Tofig Yagublu (application no. 20443/11) claimed AZN 2,500 (approximately EUR 2,315 at the time of submission of the claim) for legal fees incurred before the Court and EUR 500 (approximately EUR 460) for translation expenses;

- Mr Sardar Mammadov (application no. 24070/11) claimed AZN 4,500 (approximately EUR 4,165 at the time of submission of the claim) for legal fees incurred in the domestic proceedings and before the Court and AZN 100 (approximately EUR 93) for postal expenses;

- Mr Bakhtiyar Hajiyeu, Mr Ilgar Huseynli, Mr Nariman Yahyayev, Ms Gozel Bayramli, Mr Namat Aliyev, Mr Salman Imanli, Mr Sahib Karimli and Mr Ilham Huseynli (applications nos. 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11, 36230/11 and 37554/11, respectively) claimed EUR 1,600 each for legal expenses incurred before the Court;

- Mr Ikram Israfil (application no. 39042/11) claimed EUR 3,000 for legal expenses incurred in the domestic proceedings and before the Court.

36. The Government submitted that the claims were either excessive or, in the case of Mr Sardar Mammadov (application no. 24070/11), not itemised or supported by any relevant documents.

37. In respect of the case of Mr Sardar Mammadov (application no. 24070/11) the Court notes that the claim is not supported by any documents. It therefore rejects the claim.

38. As regards the other applications, the Court notes that all the applicants were represented by the same lawyers who have represented other applicants in similar cases before the Court and that substantial parts of the lawyers' submissions in relation to the different applications were similar. 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 the following amounts covering costs under all heads, plus any tax that may be chargeable to the applicants, to be paid directly into the representatives' bank account:

- EUR 2,000 jointly to Mr Aslan Ismayilov and Mr Tofiq Yagublu (applications nos. 20411/11 and 20443/11);
- EUR 8,000 jointly to Mr Bakhtiyar Hajiyeu, Mr Ilgar Huseynli, Mr Nariman Yahyayev, Ms Gozel Bayramli, Mr Namat Aliyev, Mr Salman Imanli, Mr Sahib Karimli and Mr Ilham Huseynli (applications nos. 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11, 36230/11 and 37554/11, respectively);
- EUR 1,000 to Mr Ikram Israfil (application no. 39042/11).

### **C. Default interest**

39. 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. 20443/11, 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11, 36230/11 and 37554/11 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;

6. *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;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, to the applicants in applications nos. 20411/11 and 20443/11 jointly, in respect of costs and expenses, to be paid directly into their representative's bank account;

(iii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicants, to the applicants in applications nos. 29604/11, 29615/11, 31944/11, 36070/11, 36209/11, 36227/11, 36230/11 and 37554/11 jointly, in respect of costs and expenses, to be paid directly into their representative's bank account;

(iv) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, to the applicant in application no. 39042/11, 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;

7. *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**

<b>No</b>	<b>Application no.</b>	<b>Lodged on</b>	<b>Applicant name year of birth place of residence</b>	<b>Represented by</b>	<b>Electoral constituency and the nominating body</b>	<b>Electoral commissions' decisions after election day</b>	<b>Domestic courts' decisions</b>
<b>1</b>	20411/11	17/03/2011	<b>Aslan ISMAYILOV</b> 1958 Baku	Akif ALIZADE	Narimanov Second Electoral Constituency No. 20, self-nominated	CEC decision of 21/11/2010	Baku Court of Appeal judgment of 26/11/2010; Supreme Court decision of 02/12/2010
<b>2</b>	20443/11	17/03/2011	<b>Tofiq YAGUBLU</b> 1961 Baku	Akif ALIZADE	Sabunchu First Electoral Constituency No. 26, nominated by the coalition of the Popular Front Party of Azerbaijan (PFP) and Musavat parties	CEC decision of 21/11/2010	Baku Court of Appeal judgment of 25/11/2010; Supreme Court decision of 02/12/2010
<b>3</b>	24070/11	08/04/2011	<b>Sardar MAMMADOV</b> 1954 Baku	Fuad AGAYEV	Nasimi First Electoral Constituency No. 21, nominated by the Karabakh Electoral Bloc	CEC decision of 20/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 01/12/2010
<b>4</b>	29604/11	02/05/2011	<b>Bakhtiyar HAJIYEV</b> 1982 Ganja	Hafiz HASANOV	Yasamal Third Electoral Constituency No. 17, self-nominated	CEC decision of 20/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 01/12/2010
<b>5</b>	29615/11	05/05/2011	<b>Ilgar HUSEYNLI</b> 1967 Masazir	Hafiz HASANOV	Imishli Electoral Constituency No. 79, self-nominated	CEC decision of 20/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 01/12/2010
<b>6</b>	31944/11	13/05/2011	<b>Nariman YAHYAYEV</b> 1952 Mingechevir	Hafiz HASANOV	Mingechevir Electoral Constituency No. 47, nominated by PFP-Musavat	CEC decision of 19/11/2010	Baku Court of Appeal judgment of 23/11/2010; Supreme Court decision of 30/11/2010

<b>7</b>	36070/11	19/05/2011	<b>Gozel BAYRAMLI</b> 1962 Baku	Hafiz HASANOV	Narimanov First Electoral Constituency No. 19, nominated by PFPA-Musavat	CEC decision of 18/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 01/12/2010
<b>8</b>	36209/11	19/05/2011	<b>Namat ALIYEV</b> 1966 Baku	Hafiz HASANOV	Barda City Electoral Constituency No. 93, nominated by PFPA-Musavat	CEC decision of 21/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 30/11/2010
<b>9</b>	36227/11	26/05/2011	<b>Salman IMANLI</b> 1955 Ganja	Hafiz HASANOV	Kapaz Second Electoral Constituency No. 40, nominated by the Karabakh Electoral Bloc	CEC decision of 21/11/2010	Baku Court of Appeal judgment of 25/11/2010; Supreme Court decision of 01/12/2010
<b>10</b>	36230/11	26/05/2011	<b>Sahib KARIMLI</b> 1974 Shaki	Hafiz HASANOV	Shaki City Electoral Constituency No. 113, nominated by PFPA-Musavat	CEC decision of 21/11/2010	Baku Court of Appeal judgment of 24/11/2010; Supreme Court decision of 30/11/2010
<b>11</b>	37554/11	20/05/2011	<b>Ilham HUSEYNLI</b> 1965 Baku	Hafiz HASANOV	Binagadi Second Electoral Constituency No. 10, nominated by PFPA-Musavat	ConEC decision of 15/11/2010; CEC decision of 19/11/2010	Baku Court of Appeal judgment of 23/11/2010; Supreme Court decision of 30/11/2010
<b>12</b>	39042/11	02/06/2011	<b>Ikram ISRAFIL</b> 1964 Sumgayit	Ruslan MUSTAFAYEV	Sumgayit First Electoral Constituency No. 41, self- nominated	ConEC decision of 11/11/2010; CEC decision of 21/11/2010	Baku Court of Appeal judgment of 25/11/2010; Supreme Court decision of 01/12/2010