FIFTH SECTION

**CASE OF ARIF ISLAMZADE v. AZERBAIJAN**

*(Application no. 57745/11 and 21 others ‑*

*see appended list*)

JUDGMENT

STRASBOURG

12 October 2017

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

In the case of Arif Islamzade v. Azerbaijan,

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

Nona Tsotsoria, *President,* Gabriele Kucsko-Stadlmayer, Lәtif Hüseynov, *judges,*  
and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having deliberated in private on 21 September 2017,

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

PROCEDURE

1.  The case originated in applications against Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2.  The applications were communicated to the Azerbaijani Government (“the Government”).

THE FACTS

3.  The list of applicants and the relevant details of the applications are set out in the appended table.

4.  The applicants complained of the non-enforcement of domestic decisions.

THE LAW

I.  JOINDER OF THE APPLICATIONS

5.  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 THE CASES TO BE STRUCK OUT UNDER ARTICLE 37 § 1 OF THE CONVENTION

6.  In some of the applications (nos. 42843/13, 57382/14, 46520/14 and 13873/15), the Government submitted unilateral declarations inviting the Court to strike the applications out of the list of cases in accordance with Article 37 § 1 of the Convention. The applicants did not comment on the Government’s unilateral declarations.

7.  Having studied the terms of the Government’s unilateral declarations and finding in particular that the amount of compensation offered in respect of pecuniary and non-pecuniary damage does not constitute adequate and sufficient redress for the violations of the applicants’ rights under the Convention (see, among many others, *Gulmammadova v. Azerbaijan,* no. 38798/07, §§ 51-63, 22 April 2010, and *Zulfali Huseynov v. Azerbaijan*, no. 56547/10, §§ 21-37, 26 June 2012), the Court considers 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 these applications (see *Tahsin Acar v. Turkey* (preliminary objections) [GC],no. 26307/95, § 75, ECHR 2003‑VI, and *Magoch v. Poland*, no. 29539/07, §§ 15-20, 2 February 2010**).**

8.  Therefore, the Court rejects the Government’s requests to strike the applications out of its list of cases under Article 37 § 1 of the Convention and will accordingly pursue its examination of the admissibility and merits of the cases.

III.  ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

9.  The applicants complained of the non-enforcement of domestic decisions given in their favour. They relied, expressly or in substance, on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1 to the Convention, which read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by a ... tribunal ...”

**Article 1 of Protocol No. 1**

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

10.  The Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of a “hearing” for the purposes of Article 6. It also refers to its case-law concerning the non-enforcement or delayed enforcement of final domestic judgments (see *Hornsby v. Greece*, no. 18357/91, § 40, Reports of Judgments and Decisions 1997‑II).

11.  In the leading cases of *Akhundov v. Azerbaijan* (no. 39941/07, §§ 15‑40, 3 February 2011) and *Jafarli and Others v. Azerbaijan* (no. 36079/06, §§ 29-58, 29 July 2010), as well as in the case of *Mirzayev v. Azerbaijan* (no. 50187/06, §§ 23-41, 3 December 2009), the Court already found a violation in respect of issues similar to those in the present case.

12.  The Court further notes that the decisions in the present applications ordered specific action to be taken. The Court therefore considers that the decisions in question constitute “possessions” within the meaning of Article 1 of Protocol No. 1 to the Convention.

13.  Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the authorities did not deploy all necessary efforts to enforce fully and in due time the decisions in the applicants’ favour.

14.  These complaints are therefore admissible and disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

IV.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

15.  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.”

16.  Regard being had to the documents in its possession and to its case‑law (see, among many others, *Zulfali Huseynov v. Azerbaijan*, no. 56547/10, §§ 21-37, 26 June 2012), the Court considers it reasonable to award the sums indicated in the appended table. It rejects any additional claims for just satisfaction raised by the applicants.

17.  The Court further notes that the respondent State has an outstanding obligation to enforce the judgments which remain enforceable.

18.  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 nos. 42843/13, 57382/14, 46520/14 and 13873/15 out of its list of cases under Article 37 § 1 of the Convention;

*3.  Declares* the applications admissible;

4.  *Holds* that these applications disclose a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the non-enforcement of domestic decisions;

5.  *Holds* that the respondent State shall ensure, by appropriate means, within three months, the enforcement of the pending domestic decisions referred to in the appended table;

6.  *Holds*

(a)  that the respondent State is to pay the applicants, within three months, the following amounts indicated in the appended table, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement:

(i)  in respect of damage, plus any tax that may be chargeable;

(ii)  in respect of costs and expenses, plus any tax that may be chargeable to the applicants, to be paid into the applicants’ representatives’ bank accounts;

(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 12 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Nona Tsotsoria

Acting Deputy Registrar President

APPENDIX

List of applications raising complaints under Article *6 § 1* of the Convention and Article 1 of the Protocol No. 1

(*non-enforcement or delayed enforcement of domestic decisions*)

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| No. | Application no. Date of introduction | Applicant name  Date of birth /  Date of registration | Representative name and location | Relevant domestic decision | Start date of non-enforcement period | End date of non-enforcement period  Length of enforcement proceedings | Amount awarded for pecuniary damage per applicant/household  (in euros)[[1]](#endnote-1) | Amount awarded for non-pecuniary damage  (in euros)[[2]](#endnote-2) | Amount awarded for costs and expenses per application  (in euros)[[3]](#endnote-3) |
|  | 57745/11  01/09/2011 | **Arif Islamzade**  09/01/1949 |  | Sumgayit Court of Appeal, 14/10/2009 | 14/10/2009 | Pending  more than 7 years and 9 months | 0 | 0 |  |
|  | 33585/13  06/05/2013 | **Almas Abdullayeva**  22/05/1966 | Mustafazade Ruslan | Sumgayit Court of Appeal, 17/09/2012 | 17/09/2012 | Pending  more than 4 years and 10 months | 2,500 | 3,000 | 200 |
|  | 36130/13  08/05/2013 | **Mazahir Bagirov**  01/04/1956 | Mustafazade Ruslan | Sumgayit Court of Appeal, 03/02/2009 | 03/02/2009 | Pending  more than 8 years and 5 months | 6,180 | 3,600 | 200 |
|  | 42843/13  17/06/2013 | **Namig Hajiyev**  01/04/1967 | Mustafazade Ruslan | Supreme Court, 19/04/2012 | 19/04/2012 | Pending  more than 5 years and 2 months | 3,570 | 3,600 | 200 |
|  | 53125/13  25/07/2013 | **Isa Rustamov**  01/08/1988 | Mustafazade Ruslan | Sumqayit City Court, 13/02/2013 | 13/03/2013 | Pending  more than 4 years and 4 months |  | 2,400 | 0 |
|  | 54494/13  05/08/2013 | **Rana Gasimova**  01/09/1963 | Mustafazade Ruslan | Sumgayit Court of Appeal, 24/07/2012 | 24/07/2012 | Pending  more than 4 years and 11 months |  | 3,000 | 0 |
|  | 17212/14  15/02/2014 | **Sohbat Gayibov**  22/04/1963 | Mustafazade Ruslan | Supreme Court, 20/10/1999 | 15/04/2002 | Pending  more than 15 years and 3 months |  | 3,600 | 0 |
|  | 17225/14  13/02/2014 | **Akif Khalilov**  01/07/1948 | Mustafazade Ruslan | Sumqayit Court of Appeal, 18/11/2009 | 18/11/2009 | Pending  more than 7 years and 8 months |  | 3,600 | 0 |
|  | 41015/14  19/05/2014 | **Aziz Agasbeyov**  12/09/1956 | Aliyev Akif | Surakhani District Court, 01/06/2011 | 01/07/2011 | Pending  more than 6 years |  | 3,600 | 200 |
|  | 46520/14  13/06/2014 | **Elman Shahmuradov**  26/05/1961 | Mustafazade Ruslan | Sumgayit City Court, 15/01/2014 | 15/02/2014 | Pending  more than 3 years and 5 months | 2,070 | 1,800 | 200 |
|  | 46522/14  13/06/2014 | **Jumshud Ismiyev**  23/09/1956 | Mustafazade Ruslan | Sumgayit City Court, 14/04/2000 | 15/04/2002 | Pending  more than 15 years and 3 months |  | 3,600 | 0 |
|  | 57382/14  06/08/2014 | **Najafali Babayev**  25/12/1958 | Nuriyev Alimammad | Baku Court of Appeal, 05/05/2010 | 05/05/2010 | Pending  more than 7 years and 2 months | 4,860 | 3,600 | 0 |
|  | 70660/14  20/10/2014 | **Tabriz Hasanov**  10/08/1956 | Mustafazade Ruslan | Sumgayit City Court, 23/04/2013 | 23/05/2013 | Pending  more than 4 years and a month |  | 2,400 | 200 |
|  | 13873/15  05/03/2015 | **Shahlar Guliyev**  02/02/1964 | Mustafazade Ruslan | Sumgayit City Court, 12/06/2012 | 12/07/2012 | Pending  more than 5 years | 3,670 | 3,000 | 200 |
|  | 35865/15  14/07/2015 | **Tahir Majidov**  20/01/1996 | Mustafazade Ruslan | Baku Court of Appeal, 21/07/2010 | 21/07/2010 | Pending  more than 6 years and 11 months |  | 3,600 | 200 |
|  | 37075/15  22/07/2015 | **Dashdamir Aliyev**  03/08/1960 | Mustafazade Ruslan | Supreme Court, 20/02/2013 | 20/02/2013 | Pending  more than 4 years and 4 months |  | 2,400 | 200 |
|  | 40227/15  04/08/2015 | **Leyla Mammadova**  24/08/1961 | Alizade Akif | Supreme Court, 21/07/2014 | 21/07/2014 | Pending  more than 2 years and 11 months |  | 1,500 | 200 |
|  | 60598/15  27/11/2015 | **Xaladdin Mammadov**  27/01/1961 | Mustafazade Ruslan | Narimanov District Court, 01/09/1998 | 15/04/2002 | Pending  more than 15 years and 3 months |  | 3,600 | 200 |
|  | 9308/16  04/02/2016 | **Kamil Najafov**  13/12/1941 | Mustafazade Ruslan | Surakhani District Court, 11/04/2013 | 11/05/2013 | Pending  more than 4 years and 2 months |  | 2,400 | 200 |
|  | 12222/16  23/02/2016 | **Mahammad Abbasov**  03/04/1962 | Baloglanov Teymur | Nasimi District Court, 27/12/1994 | 15/04/2002 | Pending  more than 15 years |  | 3,600 | 200 |
|  | 15499/16  03/03/2016 | **Salbi Bakhshaliyeva**  02/09/1957 | Mustafazade Ruslan | Sumgayit Court of Appeal, 07/06/2010 | 07/06/2010 | Pending  more than 6 years and 1 month |  | 3,600 | 200 |
|  | 17069/16  26/02/2016 | **Ziyadkhan Ahmadov**  01/09/1957 | Mustafazade Ruslan | Sumgayit City Court, 08/12/2009 | 08/01/2010 | Pending  more than 7 years and 6 months |  | 3,600 | 200 |

1. .  Plus any tax that may be chargeable. [↑](#endnote-ref-1)
2. .  Plus any tax that may be chargeable to the applicants. [↑](#endnote-ref-2)
3. .  Plus any tax that may be chargeable to the applicants. [↑](#endnote-ref-3)