



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

FIRST SECTION

CASE OF GASIMOVA AND OTHERS v. AZERBAIJAN

(Applications nos. 7867/09, 3961/10, 7709/10, 19426/10 and 25986/10)

JUDGMENT

STRASBOURG

3 May 2012

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



In the case of Gasimova and Others v. Azerbaijan,

The European Court of Human Rights (First Section), sitting as a committee composed of:

Peer Lorenzen, *President*,

Khanlar Hajiyeu,

Julia Laffranque, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 10 April 2012,

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

PROCEDURE

1. The case originated in five applications 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 the following Azerbaijani nationals:

- Ms Lala Gasimova, born in 1964, represented by Mr Nijat Ismayilov, a lawyer practising in Azerbaijan (application no. 7867/09, lodged on 28 January 2009);
- Ms Tatyana Galushko, born in 1965, represented by Ms S. Aliyeva, a lawyer practising in Azerbaijan (application no. 3961/10, lodged on 7 January 2010);
- Mr Tavakkul Aliyev, born in 1960, represented by Mr Ruslan Mustafayev, a lawyer practising in Azerbaijan (application no. 7709/10, lodged on 27 January 2010);
- Mr Suleyman Suleymanov, born in 1955, represented by Mr Rustam Huseynov, a lawyer practising in Azerbaijan (application no. 19426/10, lodged on 25 March 2010); and
- Mr Gahraman Adigozalov, born in 1947, represented by Mr Intigam Aliyev, a lawyer practising in Azerbaijan (application no. 25986/10, lodged on 28 April 2010)

2. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. On 29 September 2010 the President of the First Section decided to give notice of the applications to the Government. In accordance with Protocol No. 14, the applications were allocated to a Committee. It was also decided that the Committee would rule on the admissibility and merits of the applications at the same time (Article 29 § 1 of the Convention).

4. The Government did not object to the examination of the applications by a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. All of the applicants have either tenancy rights to their flats on the basis of occupancy vouchers (*yaşayış sahəsi orderi*) issued by the relevant executive authorities or ownership rights to them on the basis of an ownership certificate issued by the competent domestic authority (see Appendix - Table I).

6. In all five cases, the applicants' flats were unlawfully occupied by internally displaced persons ("IDPs") from different regions of Azerbaijan under occupation by Armenian military forces following the Armenian-Azerbaijani conflict over Nagorno-Karabakh.

7. The applicants lodged separate civil actions before the domestic courts seeking the eviction of the IDPs from their flats.

8. On the dates indicated in the Appendix (Table I), the applicants' claims were granted by different domestic courts, which ordered the eviction of the IDPs from their flats.

9. The respective judgments became final and enforceable. However, the IDP families refused to comply with those judgments and despite the applicants' complaints to various authorities, the judgments were not enforced.

10. After the communication of application no. 7867/09 to the respondent Government, on 16 October 2010 the judgment in favour of Ms Lala Gasimova was enforced.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the Court's judgment in the case of *Gulmammadova v. Azerbaijan* (no. 38798/07, §§ 18-24, 22 April 2010).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

12. Relying on Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants complained

about the non-enforcement of the judgments in their favour. Article 6 § 1 of the Convention reads, as far as relevant, as follows:

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

Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Article 1 of Protocol No. 1 reads as follows:

“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.”

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

A. Admissibility

1. The Court's competence rationae temporis in applications nos. 7867/09 and 25986/10

14. The Court observes that in the cases of Ms Lala Gasimova (application no. 7867/09) and Mr Gahraman Adigozalov (application no. 25986/10) the domestic judgments in the applicants' favour were delivered prior to 15 April 2002, the date of the Convention's entry into force in respect of Azerbaijan.

15. The Court notes that in the light of the authorities' continued failure to execute the judgments in question, they remained unenforced for a long period. Therefore, there was a continuous situation and the Court is thus competent to examine the part of the application relating to the period after 15 April 2002 (see *Gulmammadova*, cited above, § 26).

2. The victim status of the applicant in application no. 7867/09

16. The Court notes that the judgment in favour of Ms Lala Gasimova (application no. 7867/09) was enforced on 16 October 2010. However the Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a “victim” unless the national authorities have acknowledged, either expressly or in

substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application.

17. In the present case, having regard to the fact that the judgment remained unexecuted for more than twelve years, of which more than eight years fall within the period after the Convention's entry into force in respect of Azerbaijan, the Court finds that no redress was afforded to the applicant, as no compensation was offered to her in respect of the alleged violation of the Convention, that is the lengthy non-enforcement of the judgment of 27 July 1998.

18. In such circumstances, while it is true that the judgement in the applicant's favour was enforced, the Court finds that the measures taken in the applicant's favour were nevertheless insufficient to deprive her of "victim" status in the present case (compare with *Ramazanova and Others v. Azerbaijan*, no. 44363/02, § 38, 1 February 2007).

3. Other admissibility criteria

19. The Court further considers that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. They must, therefore, be declared admissible.

B. Merits

20. The Court points out that the factual circumstances of these cases are similar and that the complaints and legal issues raised are identical to those in the *Gulmammadova* case (cited above), in which it found violations of Article 6 § 1 and Article 1 of Protocol No. 1.

21. Having examined all the materials in its possession, the Court finds that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in respect of the present applications.

22. In particular, the Court is prepared to accept that, in these cases, the existence of a large number of IDPs in Azerbaijan created certain difficulties in relation to the execution of the judgments in the applicants' favour. Nevertheless, the judgments remained final and enforceable, but no adequate measures were taken by the authorities to ensure compliance with them. It has not been shown that the authorities acted with expedition and diligence in taking any measures necessary for the enforcement of the judgments in question. In such circumstances, the Court considers that no

reasonable justification has been advanced by the Government for the significant delay in the enforcement of the judgments.

23. As regards the applicants' submissions concerning the alleged violation of their property rights, it has not been established either in the domestic proceedings or before the Court that any specific measures were taken by the domestic authorities in order to comply with their duty to balance the applicants' right to peaceful enjoyment of their possessions protected under Article 1 of Protocol No. 1 to the Convention against the IDPs' right to be provided with accommodation. In such circumstances, the failure to ensure the execution of the judgments for considerable periods of time resulted in a situation in which the applicants were forced to bear an excessive individual burden. The Court considers that, in the absence of any compensation for this excessive individual burden, the authorities failed to strike the requisite fair balance between the general interest of the community in providing the IDPs with temporary housing and the protection of the applicants' right to peaceful enjoyment of their possessions (see *Gulmammadova*, cited above, §§ 43-50).

24. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

25. The Court does not consider it necessary to rule on the complaint under Article 13 of the Convention because Article 6 is the *lex specialis* in respect of this part of the applications (see, for example, *Efendiyeva v. Azerbaijan*, no. 31556/03, § 59, 25 October 2007).

II. 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 various sums as indicated in the Appendix (Table II) in respect of pecuniary damage:

- Ms Lala Gasimova (application no. 7867/09) claimed EUR 84,084, which included the market value of the flat and loss of rent as calculated from the date of the Convention's entry into force in respect of Azerbaijan.

- Ms Tatyana Galushko (application no. 3961/10) claimed EUR 25,468, which included loss of rent as calculated from the date of the Convention's entry into force in respect of Azerbaijan.
- Mr Tavakkul Aliyev (application no. 7709/10) claimed EUR 35,755, which included loss of rent as calculated from the date of the illegal occupation of the applicant's flat by the IDPs and the amount he allegedly paid for renting another flat.
- Mr Suleyman Suleymanov (application no. 19426/10) claimed EUR 130,848, which included loss of rent as calculated from the date of delivery to the applicant of the relevant occupancy voucher, an amount for illegal occupation of the flat and the IDP's debts for gas and electricity charges.
- Mr Gahraman Adigozalov (application no. 25986/10) claimed EUR 26,828, which included the amount he allegedly paid for renting another flat.

28. In support of their claims, all the applicants except for Mr Gahraman Adigozalov (application no. 25986/10) submitted some estimates by local companies on rent prices for comparable flats in similar conditions.

29. The Government submitted that the damage suffered by Ms Tatyana Galushko, Mr Tavakkul Aliyev and Mr Gahraman Adigozalov (applications nos. 3961/10, 7709/10 and 19426/10) should be calculated from the date of delivery of each respective judgment in the applicants' favour. The Government also argued that Ms Lala Gasimova (application no. 7867/09) could not claim any compensation for the market value of the flat. They also submitted that the respective amounts of EUR 2,500 and EUR 4,500, respectively, would be reasonable in respect of pecuniary damage suffered by Ms Tatyana Galushko and Mr Tavakkul Aliyev (applications nos. 3961/10 and 7709/10).

30. As for the part of the claim in case of Ms Lala Gasimova (application no. 7867/09) relating to the market value of the flat and the claims submitted by Mr Suleyman Suleymanov (application no. 19426/10) concerning the amount for illegal occupation of his flat and debts for gas and electricity charges, the Court rejects these parts of the respective claims as it does not find any causal link between the violation found and these parts of the claims. The Court also rejects the claim submitted by Mr Gahraman Adigozalov (application no. 25686/10) in respect of the rental expenses as he failed to submit any documents in support of his claims.

31. As to the claims in respect of lost rent, the Court considers that the applicants must have suffered pecuniary damage as a result of their lack of control over their flats and finds that there is a causal link between the violations found and the pecuniary damage claimed in respect of lost rent (compare *Radanović v. Croatia*, no. 9056/02, §§ 62-66, 21 December 2006). However, the Court considers that the damage suffered by Ms Tatyana Galushko, Mr Tavakkul Aliyev and Mr Gahraman Adigozalov

(applications nos. 3961/10, 7709/10 and 19426/10) should be calculated starting from the date of delivery of each respective judgment in the applicants' favour, and the damage suffered by Ms Lala Gasimova (application no. 7867/09) from the date of the Convention's entry into force in respect of Azerbaijan.

32. Having examined the parties' submissions in cases nos. 7867/09, 3961/10, 7709/10 and 19426/10, the Court will take as a reference point the amounts set forth in the local companies' estimates, which were submitted by the parties.

33. In making its assessment, the Court takes into account the fact that the applicants would inevitably have experienced certain delays in finding suitable tenants and would have incurred certain maintenance expenses in connection with the flats. They would have also been subject to taxation (see *Prodan v. Moldova*, no. 49806/99, § 74, ECHR 2004-III (extracts); *Popov v. Moldova (no. 1)* (just satisfaction), no. 74153/01, § 13, 17 January 2006; and *Radanović*, cited above, § 65). Having regard to the foregoing, and deciding on an equitable basis, the Court awards the following amounts to the applicants:

- Ms Lala Gasimova (application no. 7867/09): EUR 12,300;
- Ms Tatyana Galsuhko (application no. 3961/10): EUR 5,700;
- Mr Tavakkul Aliyev (application no. 7709/10): EUR 5,600; and
- Mr Suleyman Suleymanov (application no. 19426/10): EUR 3,700.

No award is made to Mr Gahraman Adigozalov (application no. 25986/10), for the reasons mentioned in paragraph 30 above.

2. *Non-pecuniary damage*

34. The applicants claimed various sums as indicated in the Appendix (Table II) in respect of non-pecuniary damage.

35. The Government indicated their willingness to accept the applicants' claims for non-pecuniary damage up to a maximum of EUR 1,000 in respect of each applicant.

36. The Court considers that the applicants must have sustained some non-pecuniary damage as a result of the lengthy non-enforcement of the final judgments in their favour. However, the amounts claimed in most of the cases are excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the following amounts under this head, plus any tax that may be chargeable on these amounts:

- Ms Lala Gasimova (application no. 7867/09): EUR 3,600;
- Ms Tatyana Galsuhko (application no. 3961/10): EUR 1,800;
- Mr Tavakkul Aliyev (application no. 7709/10): EUR; 3,000;
- Mr Suleyman Suleymanov (application no. 19426/10): EUR 1,500; and
- Mr Gahraman Adigozalov (application no. 25986/10): EUR 3,600.

37. Moreover, the Court considers that, in so far as the judgments remain in force, the State's outstanding obligation to enforce them cannot be disputed. Accordingly, the applicants in application nos. 3961/10, 7709/10, 19426/10 and 25986/10 are still entitled to the enforcement of the respective judgments in their favour. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicants, as far as possible, are put in the position they would have been in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). Having regard to the violation found, the Court finds that this principle also applies in the present cases. It, therefore, considers that the Government shall secure, by appropriate means, the enforcement of the judgments in favour of Ms Tatyana Galushko (application no. 3961/10), Mr Tavakkul Aliyev (application no. 7709/10), Mr Suleyman Suleymanov (application no. 19426/10) and Mr Gahraman Suleymanov (application no. 25986/10).

B. Costs and expenses

38. All the applicants, except Ms Tatyana Galushko (application no. 3961/10), also claimed various sums as indicated in the Appendix (Table II) for the costs and expenses incurred before the domestic courts and the Court.

39. The Government considered the claims to be unjustified.

40. 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.

41. Ms Tatyana Galushko (application no. 3961/10) did not submit a claim for costs and expenses incurred before the Court. Accordingly, the Court considers that there is no call to award her any sum under this head.

42. Having regard to the fact that Ms Lala Gasimova (application no. 7867/09) failed to produce any supporting documents, the Court dismisses her claim for costs and expenses.

43. As for the claims for costs and expenses by Mr Tavakkul Aliyev (application no. 7709/10), Mr Suleyman Suleymanov (application no. 19426/10) and Mr Gahraman Adigozalov (application no. 25986/10), the Court notes the fact that the cases concern matters on which there is well-established case-law. In view of the above consideration and having regard to the supporting documents submitted by the applicants, the Court awards the amount of EUR 500 to each applicant in the above-mentioned cases, in respect of the legal services rendered by their respective representatives.

C. Default interest

44. The Court considers it appropriate that the default interest 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. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
6. *Holds* that the respondent State, within three months, according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the domestic courts' judgments in the applicants' favour in cases nos. 3961/10, 7709/10, 19426/10 and 25986/10;
7. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, 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) in respect of damage:
 - Ms Lala Gasimova (application no. 7867/09) EUR 12,300 (twelve thousand three hundred euros) in respect of pecuniary damage and EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Ms Tatyana Galushko (application no. 3961/10) EUR 5,700 (five thousand seven hundred euros) in respect of pecuniary damage and EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Mr Tavakkul Aliyev (application no. 7709/10) EUR 5,600 (five thousand six hundred euros) in respect of pecuniary

- damage and 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- Mr Suleyman Suleymanov (application no. 19426/10) EUR 3,700 (three thousand seven hundred euros) in respect of pecuniary damage and EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Mr Gahraman Adigozalov (application no. 25986/10) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) in respect of costs and expenses, EUR 500 (five hundred euros), to each of the applicants Tavakkul Aliyev (application no. 7709/10), Suleyman Suleymanov (application no. 19426/10) and Gahraman Adigozalov (application no. 25986/10), plus any tax that may be chargeable to the applicants, to be paid into the applicants' respective representative's 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;

8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 3 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Peer Lorenzen
President

APPENDIX

Table I

Application no.	Applicant's name	Document confirming the applicant's property rights	Date of delivery of the enforceable judgment	Date of lodging of the application with the Court
7867/09	Lala Gasimova	The occupancy voucher of 11 March 1998	The Yasamal District Court's judgment of 27 July 1998	28 January 2009
3961/10	Tatyana Galushko	The occupancy voucher of 18 January 1993	The Khatai District Court's judgment of 21 July 2008	7 January 2010
7709/10	Tavakkul Aliyev	The ownership certificate of 8 August 2003	The Sumgait City Court's judgment of 11 October 2005	27 January 2010
19426/10	Suleyman Suleymanov	The occupancy voucher of 26 November 1998	The Yasamal District Court's judgment of 10 February 2009	25 March 2010
25986/10	Gahraman Adigozalov	The occupancy voucher of 5 March 1993 and the ownership certificate of 6 August 2003	The Surakhani District Court's judgment of 31 August 1993	28 April 2010

Table II

Application no.	Applicant's name	Claim for pecuniary damage (EUR)	Claim for non-pecuniary damage (EUR)	Claim for costs and expenses
7867/09	Lala Gasimova	84,084	15,000	1,500
3961/10	Tatyana Galushko	25,468	10,000	
7709/10	Tavakkul Aliyev	35,755	3,000	1,450
19426/10	Suleyman Suleymanov	130,848	45,000	2,450
25986/10	Gahraman Adigozalov	26,828	45,000	1,070