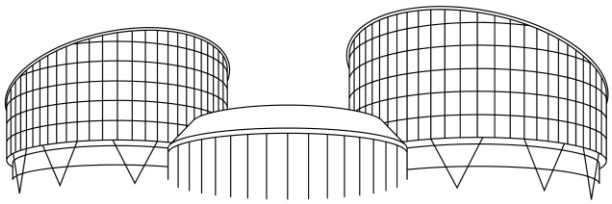

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF HAJIYEVA AND OTHERS v. AZERBAIJAN

(Applications nos. 50766/07, 50786/07, 50871/07 and 50913/07)

JUDGMENT

STRASBOURG

8 July 2010

FINAL

08/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hajiyeva and Others v. Azerbaijan**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 June 2010,

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

PROCEDURE

1. The case originated in four 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") on 8 August 2007 by four Azerbaijani nationals:

– Mrs Simuzer Hajiyeva, born in 1943, application no. 50766/07;
– Mrs Tatyana Tokareva, born in 1948, application no. 50786/07;
– Mr Aslan Huseynov, born in 1951, application no. 50871/07; and
– Mrs Gular Aliyeva, born in 1959, application no. 50913/07.

2. The applicants were represented by Mr N. Ismayilov, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicants alleged that the failure to enforce the judgments in their favour violated their rights to a fair trial and their property rights, as guaranteed by Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. The President of the First Section decided to give notice of the applications to the Government on the following dates: 28 November 2008 (applications nos. 50766/07 and 50786/07), 3 December 2008 (application no. 50871/07) and 17 December 2008 (application no. 50913/07).

5. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On the dates indicated in the Appendix each applicant was issued with an occupancy voucher (*yaşayış orderi*) for a flat in the same recently constructed residential building in Baku (see Table I).

7. At the same time, the applicants became aware that their respective flats had been occupied by families of internally displaced persons ("IDP") from different regions under the occupation of the Armenian military forces following the Armenian-Azerbaijan conflict over Nagorno-Karabakh.

8. According to the applicants, despite their numerous demands the IDP families refused to vacate the flats, pointing out that they were IDPs and had no other place to live.

9. On different dates the applicants lodged civil actions with the Yasamal District Court asking the court to order the eviction of these families from their flats.

10. On the dates indicated in the Appendix (Table I), the Yasamal District Court granted the applicants' claims and ordered that the IDP families be evicted from the flats. In all cases, the court held that the applicants were the sole lawful tenants of the flats on the basis of the occupancy vouchers and therefore the flats were being unlawfully occupied by the IDP families.

11. No appeals were lodged against the judgments of the Yasamal District Court and, pursuant to the domestic law, they became enforceable upon the expiry of the relevant appeal periods. However the IDP families refused to comply with the judgments and despite the applicants' complaints to various authorities, the judgments were not enforced.

12. On an unspecified date in 2006, the applicants, who were in the same situation, lodged a joint action with the Yasamal District Court complaining that the Yasamal District Department of Judicial Observers and Enforcement Officers ("the Department of Enforcement Officers") had not taken measures to enforce the judgments.

13. On 27 December 2006 the Yasamal District Court dismissed that complaint as unsubstantiated. The applicants appealed against this judgment. On 12 November 2007, after a series of appeals and quashings, the Court of Appeal dismissed the applicants' request and terminated the case noting that there was no need to deliver a separate judgment on enforceability of the judgments.

14. It appears from the case file that, after the lodging of the present applications with the Court, the defendant IDP families lodged a joint request with the Yasamal District Court asking for postponement of the execution of the judgments on their eviction from the applicants' flats. They

alleged that, as they were IDPs, they had no other place to live but the flats in question.

15. After a series of appeals by the applicants and defendants, by a decision of 6 June 2008, the Yasamal District Court declared the defendants' request inadmissible for non-compliance with procedural norms. The court explained that the IDPs should lodge their requests separately.

16. On different dates, the defendants IDP families lodged separate court actions asking for postponement of the judgments ordering their eviction from the applicants' flats. The proceedings can be summarised as follows:

(a) As for application no. 50766/07, on 3 July 2008, the Yasamal District Court upheld the postponement request. On 27 January 2009 the Baku Court of Appeal upheld the postponement decision.

(b) As for application no. 50786/07, on 26 November 2008, the Yasamal District Court upheld the postponement request. On 9 January 2009 the Baku Court of Appeal upheld the postponement decision.

(c) As for application no. 50871/07, on 25 June 2008, the Yasamal District Court upheld the postponement request. On 16 October 2008 the Baku Court of Appeal upheld the postponement decision.

(d) As for application no. 50913/07, on 27 June 2008, the Yasamal District Court upheld the postponement request. On 29 December 2008 the Baku Court of Appeal upheld the postponement decision.

17. On an unspecified date in 2008 the applicants lodged a joint action against different authorities, seeking compensation for non-enforcement of the judgments delivered in their favour. On 19 December 2008 the Yasamal District Court dismissed the applicants' claims as unsubstantiated. On 3 March 2009 the Baku Court of Appeal and on 3 July 2009 the Supreme Court upheld the first-instance court's judgment.

18. At the time of the latest communications with the applicants, the respective judgments remained unenforced.

II. RELEVANT DOMESTIC LAW

19. The relevant domestic law is summarised in *Gulmammadova v. Azerbaijan* (no. *38798/07*, §§ 18-24, 22 April 2010).

THE LAW

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

20. Relying on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants complained about the non-enforcement of the Yasamal District Court's judgments in their favour. Article 6 § 1 of the Convention reads, as far as relevant, as follows:

> "1. 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."

21. Pursuant to Rule 42 § 1 of the Rules of the Court, the Court decides to join the applications given their common factual and legal background.

A. Admissibility

1. The Court's competence rationae temporis *in applications nos. 50766/07 and 50786/07)*

22. The Court observes that in two cases (applications nos. 50766/07 and 50786/07) the domestic judgments in favour of the applicants had been delivered prior to 15 April 2002, the date of the Convention's entry into force in respect of Azerbaijan.

23. The Court notes that in the light of the authorities' continued failure to execute the judgments in question, they remain still unenforced. There is a continuous situation and the Court is therefore competent to examine the

part of the applications relating to the period after 15 April 2002 (see *Gulmammadova*, cited above, § 26).

2. Domestic remedies

24. The Government argued that the applicants had failed to exhaust domestic remedies. In particular, the Government noted that separate postponement proceedings launched by defendant IDP families were pending before the domestic courts at the moment the applicants lodged their respective applications before the Court.

25. The applicants disagreed with the Government and maintained that the remedies suggested by the Government were not appropriate in the circumstances of the present case.

26. The Court notes that a similar objection was raised by the Government in the *Gulmammadova* case and was dismissed by the Court (see *Gulmammadova*, cited above, § 31). The Court refers to its reasoning in that case and sees no ground to depart from it. Therefore this part of the Government's objection should be dismissed.

3. Conclusion

27. 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

28. The Government submitted that, due to the large number of IDPs in Azerbaijan as a result of the Armenian-Azerbaijani conflict over Nagorno-Karabakh, there was a serious problem with housing for IDPs in Azerbaijan. The Government noted that the judgments in the applicants' favour could not be enforced because there was no other accommodation available for the IDPs settled in the flats in question.

29. The applicants reiterated their complaints.

30. The Court notes that judgments in the applicants' favour remained unenforced for considerable periods of time, ranging approximately from six to eight years.

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

32. Having examined all the material in its possession, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

33. 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 the execution of the judgments in the applicants' favour. Nevertheless, the judgments remained in force, but no adequate measures were taken by the authorities to comply with them. It has not been shown that the authorities had continuously and diligently taken the measures for the enforcement of the judgments in question. In such circumstances the Court considers that no reasonable justification was advanced by the Government for the significant delay in the enforcement of the judgments.

34. Concerning the applicants' submissions about 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 have been taken by the domestic authorities in order to comply with their duty of balancing the applicants right to peaceful enjoyment of their possessions protected under Article 1 of Protocol No. 1 to the Convention against IDPs' right to be provided with accommodation. In such circumstances, the failure to ensure the execution of the judgments for several years resulted in a situation where the applicants were forced to bear an excessive individual burden. The Court considers that, in the absence of any compensation for having this excessive individual burden to be borne by the applicants, 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).

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

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicants claimed different sums indicated in the Appendix (Table II) in respect of pecuniary damage. The amounts claimed covered the loss of rent and the alleged current market value of the flats. The applicants calculated the amount of the lost rent based on the information on the monthly market rent of flats situated in the relevant area of the city. This information was obtained from an association specialising in these matters.

39. The Government argued that the applicants could not claim any compensation for the market value of the flats. The Government further noted that, having applied to the same association, they had checked the grounds for the remainder of the claim corresponding to the loss of rent sustained as a result of the applicants' inability to use their flats and indicated their willingness to accept the part of the applicants' claims in respect of the pecuniary damage under this head up to the sums indicated in the Appendix (Table II).

40. As for the part of the claims relating to the market value of the flats, the Court rejects this part as it does not find any causal link between the violation found and this part of the claim.

41. As for the part of the claims relating to the loss of rent, the Court finds that there is a causal link between this part of the claims and the violations found and that the applicants must have suffered pecuniary damage as a result of their lack of control over their flats. Having examined the parties' submissions and deciding on an equitable basis, the Court accepts the basis for calculation of the damage proposed by the Government and awards the applicants the amounts indicated in the Appendix (Table II, sum accepted by the Government) on account of their loss of rent, plus any tax that may be chargeable on those amounts.

2. Non-pecuniary damage

42. The applicants claimed different amounts from 20,000 euros (EUR) to EUR 25,000 in respect of non-pecuniary damage.

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

44. The Court considers that the applicants must have sustained some non-pecuniary damage as a result of the lengthy non-enforcement of the final judgment in their favour. However the amounts claimed are excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards EUR 4,800 to each applicant plus any tax that may be chargeable on these amounts.

45. 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 are still entitled to enforcement of those judgments. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he 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 the applicants' favour.

B. Costs and expenses

46. The applicants also claimed EUR 1,500 for the costs and expenses incurred before the Court. These claims were not itemised or supported by any documents.

47. The Government considered the claims to be unjustified.

48. 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. In the present cases, having regard to the fact that the applicants failed to produce any supporting documents, the Court dismisses the claims for costs and expenses.

C. Default interest

49. 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 from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the domestic courts' judgments in the applicants' favour;

7. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums:
– Mrs Simuzer Hajiyeva (application no. 50766/07) – EUR 7,174 (seven thousand one hundred and seventy-four euros) in respect of pecuniary damage and EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage;
– Mrs Tatyana Tokareva (application no. 50786/07) – EUR 11,456 (eleven thousand four hundred and fifty-six euros) in respect of pecuniary damage and EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage;
– Mr Aslan Huseynov (application no. 50871/07) – EUR 10,545.91 (ten thousand five hundred and forty-five euros and ninety-one cents) in respect of pecuniary damage and EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage; and
– Mrs Gular Aliyeva (application no. 50913/07) – EUR 10,376 (ten thousand three hundred and seventy-six euros) in respect of pecuniary damage and EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage;

(b) that the above amounts shall be converted into New Azerbaijani manats at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) 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 8 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

APPENDIX

Table I

Application no.	Name of the applicant	Date of issue of the occupancy voucher	Date of final domestic judgment
50766/07	Simuzer Hajiyeva	21 January 1998	9 July 1998, the Yasamal District Court
50786/07	Tatyana Tokareva	16 June 1998	12 October 1998, the Yasamal District Court
50871/07	Aslan Huseynov	21 January 1998	4 March 2003, the Yasamal District Court
50913/07	Gular Aliyeva	16 March 1998	2 April 2004, the Yasamal District Court

Table II

Application no.	Claim for pecuniary damage (EUR)	Sum accepted by the Government in respect of pecuniary damage (EUR)	Claim for non-pecuniary damage(EUR)	Claim for cost and expenses (EUR)
50766/07	72,944	7,174	25,000	1,500
50786/07	68,809	11,456	20,000	1,500
50871/07	68,809	10,545.91	20,000	1,500
50913/07	72,944	10,376	25,000	1,500