



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

FIRST SECTION

CASE OF SOLTANOV AND OTHERS v. AZERBAIJAN

*(Applications nos. 41177/08, 41224/08, 41226/08, 41245/08, 41393/08, 41408/08,
41424/08, 41688/08, 41690/08 and 43635/08)*

JUDGMENT

STRASBOURG

13 January 2011

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



In the case of Soltanov and Others v. Azerbaijan,

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

Nina Vajić, *President*,

Khanlar Hajiyeu,

Dean Spielmann, *judges*,

Having deliberated in private on 9 December 2010,

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

PROCEDURE

1. The case originated in ten 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 Azerbaijani nationals:

- Mr Hajibala Soltanov, born in 1957, application no. 41177/08, lodged on 28 July 2008
- Mr Akif Islamov, born in 1958, application no. 41224/08, lodged on 28 July 2008
- Mr Vakil Verdiyev, born in 1956, application no. 41226/08, lodged on 28 July 2008
- Mr Bayram Isayev, born in 1959, application no. 41245/08, lodged on 30 July 2008
- Mr Figani Abbasov, born in 1953, application no. 41393/08, lodged on 30 July 2008
- Mrs Sevda Afandiyeva, born in 1955, application no. 41408/08, lodged on 28 July 2008
- Mrs Rahila Ahmadova, born in 1953, application no. 41424/08, lodged on 28 July 2008
- Mr Vagif Karimov, born in 1941, application no. 41688/08, lodged on 4 August 2008
- Mr Alkhas Gozalov, born in 1946, application no. 41690/08, lodged on 4 August 2008, and
- Mr Ogtay Maharramov, born in 1959, application no. 43635/08, lodged on 4 August 2008

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

3. On 12 March 2010 the President of the First Section decided to give notice of the application to the Government. In accordance with Protocol No. 14, the applications were allocated to a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. 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 Table I).

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

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

7. 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 the flats.

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

II. RELEVANT DOMESTIC LAW

9. 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

10. 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 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.”

11. 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 application no. 43635/08*

12. The Court observes that in the case of Mr Ogtay Maharramov (application no. 43635/08), the domestic judgment in the applicant's favour was delivered prior to 15 April 2002, the date of the Convention's entry into force in respect of Azerbaijan.

13. The Court notes that in the light of the authorities' continued failure to execute the judgment in question, it remains still unenforced. There is a continuous situation and the Court is therefore competent to examine the part of the application relating to the period after 15 April 2002 (see *Gulmammadova*, cited above, § 26).

2. *Conclusion*

14. 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

15. The Court points out that the factual circumstances of these 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.

16. 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 respect of the present applications.

17. 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.

18. 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 considerable periods of time 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).

19. There has accordingly been violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

20. 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 applications (see, for example, *Efendiyeva v. Azerbaijan*, no. 31556/03, § 59, 25 October 2007).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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*

22. The applicants claimed different sums indicated in the Appendix (Table II) in respect of pecuniary damage. The amounts claimed covered the loss of rent from the dates of delivery to the applicants of the relevant occupancy vouchers or ownership certificates. In support of their claims, the applicants submitted a local company's estimates on the rent prices for the flats of a similar condition.

23. The Government submitted that the applicants failed to justify their claims.

24. 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 damage claimed in respect of the lost rent (compare *Radanović v. Croatia*, no. 9056/02, §§ 62-66, 21 December 2006). However, the Court considers that the damage should be calculated starting from the date of delivery of each judgment and not from the dates of delivery of the occupancy vouchers or ownership certificates as claimed by the applicants.

25. Having examined the parties' submissions, the Court will take as a reference point the amount set forth in the local company's assessment submitted by the applicants.

26. 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 subjected 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 2,500 euros (EUR) to each of the applicants in applications nos. 41177/08; 41224/08; 41226/08; 41245/08; 41393/08; 41408/08; 41424/08; 41688/08 and 41690/08 and EUR 7,000 to the applicant in the application no. 43635/08, on account of pecuniary damage for lost rent.

2. *Non-pecuniary damage*

27. Each applicant claimed EUR 3,000 in respect of non-pecuniary damage.

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

29. 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 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:

- EUR 1,200 to each of the applicants in applications nos. 41177/08; 41224/08; 41226/08; 41245/08; 41393/08; 41408/08; 41424/08; 41688/08 and 41690/08; and
- EUR 3,000 to Mr Ogtay Maharramov (application no. 41408/08).

30. 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 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 the applicants' favour.

B. Costs and expenses

31. The applicants also claimed different sums indicated in the Appendix (Table II) for the costs and expenses incurred before the domestic courts and the Court.

32. The Government considered the claims to be unjustified.

33. The Court notes that all the applicants were represented by the same lawyer (Mr M. Mustafayev) in the proceedings before the Court. Having regard to the services stipulated in the relevant contracts between the applicants and Mr Mustafayev and the services actually rendered, the Court considers that the amounts claimed do not correspond to the legal assistance that was actually provided and was necessary in the present cases. The Court further notes the similarity of the complaints and legal arguments submitted in all cases and observes that substantial parts of the lawyer's

submissions in all cases were either identical or very similar. In view of the above considerations, the Court awards the total amount of EUR 2,000 to all applicants jointly in respect of the legal services rendered by Mr Mustafayev.

C. Default interest

34. 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, 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, the following amounts to be converted into New Azerbaijani manats at the rate applicable at the date of settlement:
 - (i) in respect of damage:
 - Mr Hajibala Soltanov (application no. 41177/08) – EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Mr Akif Islamov (application no. 41224/08) – EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- Mr Vakil Verdiyev (application no. 41226/08) – EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Mr Bayram Isayev (application no. 41245/08) – EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Mr Figani Abbasov (application no. 41393/08) – EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Mrs Sevda Afandiyeva (application no. 41408/08) – EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Mrs Rahila Ahmadova (application no. 41424/08) – EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Mr Vagif Karimov (application no. 41688/08) – EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - Mr Alkhas Gozalov (application no. 41690/08) – EUR 2,500 (two thousand five hundred euros) in respect of pecuniary damage and EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
 - Mr Ogtay Maharramov (application no. 43635/08) – EUR 7,000 (seven thousand euros) in respect of pecuniary damage and EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) in respect of costs and expenses, EUR 2,000 (two thousand euros), jointly for all applicants, plus any tax that may be chargeable to the applicants, to be paid into the applicants' 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' claims for just satisfaction.

Done in English, and notified in writing on 13 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President

APPENDIX

Table I

Application no.	Applicant's name	Document confirming the applicant's property rights	Date of delivery of the domestic judgment	Date of lodging of the application with the Court
41177/08	Hajibala Soltanov	The occupancy voucher of 21 October 1996	The Sumgayit Court of Appeal's judgment of 30 December 2008	28 July 2008
41224/08	Akif Islamov	The ownership certificate of 30 October 2007	The Sumgayit Court of Appeal's judgment of 30 December 2008	28 July 2008
41226/08	Vakil Verdiyev	The ownership certificate of 29 April 2005	The Sumgayit Court of Appeal's judgment of 30 December 2008	28 July 2008
41245/08	Bayram Isayev	The occupancy voucher of 29 April 1994	The Sumgayit Court of Appeal's judgment of 24 December 2008	30 July 2008
41393/08	Figani Abbasov	The occupancy voucher of 9 December 1993	The Sumgayit Court of Appeal's judgment of 30 December 2008	30 July 2008
41408/08	Sevda Afandiyeva	The ownership certificate of 27 March 1998	The Sumgayit Court of Appeal's judgment of 30 December 2008	28 July 2008
41424/08	Rahila Ahmadova	The ownership certificate of 7 December 2007	The Sumgayit Court of Appeal's judgment of 30 December 2008	28 July 2008
41688/08	Vagif Karimov	The occupancy voucher of 12 April 1996	The Sumgayit Court of Appeal's judgment of 30 December 2008	4 August 2008
41690/08	Alkhas Gozalov	The ownership certificate of 22 November 1996	The Sumgayit Court of Appeal's judgment of 13 January 2009	4 August 2008
43635/08	Ogtay Maharramov	The ownership certificate of 6 June 1997	The Sumgayit City Court's judgment of 23 April 1998	4 August 2008

Table II

Application no.	Applicant's name	Claim for pecuniary damage (EUR)	Claim for costs and expenses
41177/08	Hajibala Soltanov	61,200	1,450
41224/08	Akif Islamov	65,280	1,600
41226/08	Vakil Verdiyev	61,200	1,500
41245/08	Bayram Isayev	57,120	1,450
41393/08	Figani Abbasov	53,040	1,450
41408/08	Sevda Afandiyeva	51,000	1,450
41424/08	Rahila Ahmadova	65,280	1,650
41688/08	Vagif Karimov	51,000	1,520
41690/08	Alkhas Gozalov	51,000	1,450
43635/08	Ogtay Maharramov	57,120	1,000