



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

FIFTH SECTION

CASE OF AHMADOV v. AZERBAIJAN

(Application no. 32538/10)

JUDGMENT

Art 8 • Respect for private life • Arbitrary refusal to issue an identity card

STRASBOURG

30 January 2020

FINAL

30/05/2020

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

In the case of Ahmadov v. Azerbaijan,

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

Angelika Nußberger, *President*,

Gabriele Kucsko-Stadlmayer,

André Potocki,

Yonko Grozev,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 10 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 32538/10) 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 Mr Eldar Ziyadkhan oglu Ahmadov (*Eldar Ziyadxan oğlu Əhmədov* – “the applicant”), on 12 June 2010.

2. At the time of lodging the application, the applicant was represented by Ms G. Guliyeva, a lawyer based in Lisbon. On 21 January 2019 the President of the Section gave Ms G. Guliyeva leave to represent the applicant in the proceedings before the Court (Rule 36 § 4 (a) *in fine* of the Rules of Court). By a letter of 4 December 2019 Ms G. Guliyeva informed the Court of her withdrawal from the applicant’s representation. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Əsgərov.

3. The applicant alleged that the denial of his Azerbaijani citizenship by the domestic authorities which had refused to issue him with an identity card had amounted to a breach of his rights guaranteed by Article 8 of the Convention.

4. On 23 May 2018 notice of the complaint concerning Article 8 of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information

5. The applicant, who is of Azerbaijani ethnicity, was born in Marneuli (Georgia) in 1973 and lives in Baku.

6. On 27 September 1990 he was issued with a passport of the Soviet Union by the authorities of the Soviet Socialist Republic of Georgia.

7. After having graduated from secondary school in Georgia in 1991, the applicant moved to Baku, where he studied at the Azerbaijan Oil and Chemistry Institute. He was also registered on 9 October 1991 at a dormitory of that institute in Baku. As from 1 February 1999 the applicant was registered at his sister's place of residence in Baku.

8. On 22 September 1998 the Nasimi District Police Office ("the NDPO") inserted a second photograph into the applicant's Soviet passport and authorised it with a seal. It also put a stamp in his Soviet passport which indicated that he was a "citizen of the Republic of Azerbaijan" (*Azərbaycan Respublikasının vətəndaşı*).

9. The applicant was indicated as a citizen of the Republic of Azerbaijan and a resident of Baku on the birth certificate of his son (Z.A., born in Georgia on 5 August 2002) issued by the Georgian authorities.

10. It appears from a letter from the Sabunchu First Electoral Constituency no. 26 dated 10 June 2008 that the applicant had been on the electoral roll as a citizen of the Republic of Azerbaijan since 1991. It further appears from the documents in the case file that the applicant regularly received from the relevant electoral constituency polling cards for various elections held in Azerbaijan and cast his vote in the presidential elections of 15 October 2008 and the referendum of 18 March 2009.

11. According to the applicant's military identity card (*hərbi билет*) issued on 27 September 2008 by the Sabunchu District Military Commissariat, the applicant was registered as a reserve officer and obtained the military rank of lieutenant by a decision dated 18 August 1996 of the Ministry of Defence of the Republic of Azerbaijan.

B. Refusal to issue an identity card

12. On an unspecified date in 2008 the applicant applied to the Sabunchu District Police Office ("the SDPO") for an identity card.

13. By a letter of 26 September 2008, the SDPO refused to issue him with an identity card, relying on Article 5 of the Law on Citizenship of 30 September 1998. It was indicated in the letter that in accordance with Article 5 of the Law on Citizenship individuals who were resident in

Azerbaijan before the entry into force of that Law were considered citizens of the Republic of Azerbaijan. However, the applicant's registration at a place of residence in Azerbaijan had been temporary at the relevant time because he had been registered as a student on account of his studies.

14. In a letter dated 22 December 2008, the State Migration Service ("the SMS") informed the applicant that he was not considered to be a citizen of the Republic of Azerbaijan in accordance with the Law on Citizenship.

C. Remedies used by the applicant

15. On 19 February 2009 the applicant lodged a complaint with the Sabunchu District Court against the SDPO and the SMS. He asked the court to declare unlawful the respondents' refusal to recognise his Azerbaijani citizenship and to order them to issue him with an identity card. In support of his claim, the applicant submitted that he had lived continuously in Azerbaijan since 1991 and had been considered by the Azerbaijani authorities as a citizen of the Republic of Azerbaijan. In that connection, he referred to the fact that on 22 September 1998 the NDPO had put a stamp in his Soviet passport confirming his Azerbaijani citizenship, that he had been registered as a reserve officer in the Azerbaijani army, and that he had participated in all the elections held in Azerbaijan. He further disputed the interpretation of Article 5 of the Law on Citizenship made by the SDPO and the SMS, pointing out that he had been duly registered in Azerbaijan before the entry into force of that Law and should thus be considered a citizen of the Republic of Azerbaijan on those grounds. He also noted that the Law in question did not draw a distinction between temporary and permanent registration.

16. In the course of the court proceedings, the representative of the SMS asked the Sabunchu District Court to dismiss the applicant's claim, arguing that the applicant could not be considered a citizen of the Republic of Azerbaijan under Article 5 of the Law on Citizenship as it concerned only those who had had a permanent registration in Azerbaijan before the entry into force of that Law. The representative further stated that, as the interpretation of the initial wording of Article 5 of the Law on Citizenship had given rise to disputes, on 24 June 2008 that provision had been amended.

17. On 1 April 2009 the Sabunchu District Court allowed the applicant's claim and ordered the SDPO to issue an identity card to him. The court first established that the applicant had been continuously resident in Azerbaijan since 1991 and this fact had not been contested by the respondent domestic authorities. It further held that the relevant applicable domestic law in the present case was the wording of Article 5 of the Law on Citizenship as in force before 24 June 2008 which provided that those who had been resident

in Azerbaijan before the entry into force of that Law were considered as citizens of the Republic of Azerbaijan. Citing the Court's case-law, the court also found that the law should comply with the requirements of the quality of law, which should be accessible to the person concerned and foreseeable as to its effects. In that connection, it held that the SMS's argument that the applicant could not be considered a citizen because he had only a temporary registration at a place of residence as a student could not be accepted because the Law on Registration at Place of Residence and Stay did not draw a distinction between temporary and permanent registration and cited dormitories among places of residence where a person could reside. The court also held that the applicant had entered into various types of relationships with the Azerbaijani State since 1991 which belonged, by their nature, to the category of the relationships that exist only between a State and its citizens. In particular, it referred to the applicant's participation in elections, his registration as a reserve military officer by the Ministry of Defence and the existence of a stamp confirming his Azerbaijani citizenship in his Soviet passport. Lastly, the court noted that the specification of the identity card of the Republic of Azerbaijan had been established by a decision of the Cabinet of Ministers dated 2 February 1999 and that until that date an accepted identity document of a citizen of the Republic of Azerbaijan had been a Soviet passport with a stamp confirming Azerbaijani citizenship.

18. On an unspecified date the SMS lodged an appeal against that judgment, disputing the interpretation of the relevant law by the first-instance court. The SMS also complained of the first-instance court's failure to examine whether the applicant had been a citizen of the Republic of Georgia. In that connection it referred to a document from the State Border Service confirming that the applicant had crossed the Azerbaijani-Georgian State border on 25 and 27 October 2002 using a Georgian passport which had been valid until 24 January 2007.

19. It appears from the transcripts of the court hearings that the applicant asked the appellate court to dismiss the SMS's appeal. He also pointed out that it had been noted that he had been a citizen of the Republic of Azerbaijan on the birth certificate of his son issued by Georgia and that, in any event, the fact that he had Georgian citizenship did not prove that he was not a citizen of the Republic of Azerbaijan or had lost his Azerbaijani citizenship. It also appears from the documents submitted to the appellate court by the State Border Service and the Sabunchu First Electoral Constituency no. 26 that Soviet passports had been used in Azerbaijan for crossing State borders until 1 January 2005 and for electoral purposes until the parliamentary elections of October 2005.

20. On 27 July 2009 the Baku Court of Appeal quashed the first-instance court's judgment and delivered a new judgment on the merits, dismissing the applicant's claim. The appellate court held that the applicant could not

be considered to be a citizen of the Republic of Azerbaijan since when the Law on Citizenship had entered into force on 7 October 1998 he had not had a permanent registration at his place of residence in Azerbaijan. The appellate court also found that the applicant's other arguments (his participation in elections and referendums, ownership of immovable property in Azerbaijan, his being noted as an Azerbaijani citizen on his son's birth certificate) in favour of his Azerbaijani citizenship did not constitute grounds to be considered a citizen of the Republic of Azerbaijan. The appellate court's judgment was, however, silent as regards the stamp in the applicant's Soviet passport confirming his Azerbaijani citizenship and his registration as a reserve officer in the Azerbaijani army.

21. On 7 September 2009 the applicant lodged a cassation appeal against that judgment, reiterating his previous arguments.

22. On 15 December 2009 the Supreme Court upheld the appellate court's judgment. The relevant part of the decision reads as follows:

"... The arguments (participation in elections and referendums, ownership of immovable property in the Republic of Azerbaijan, [the applicant's] Azerbaijani citizenship's being noted on the birth certificate of his son, and so forth) relied on by the applicant ... in his application in order to establish his right to Azerbaijani citizenship do not constitute grounds for establishing his right to ... citizenship.

In reply to the arguments of [the applicant]'s cassation appeal, the court bench considers that Article 5 (I) § 1 of the Law on Citizenship of the Republic of Azerbaijan (both in its initial and subsequent wording) concerns those individuals who held citizenship of the Republic of Azerbaijan before the date of the entry into force of this Law and had been registered at a place of residence in the Republic of Azerbaijan before the date of the entry into force of that Law. As the applicant ... had not held citizenship of the Azerbaijani Republic before the date of the entry into force of that law, the fact that he is currently registered at a place of residence in the Republic of Azerbaijan is not grounds for establishing his right to citizenship of the Republic ..."

D. Further developments

23. On 12 September 2013 the applicant lodged a new complaint with the Baku Administrative-Economic Court no. 1 against the Ministry of Internal Affairs, asking the court to order the respondent to issue him an identity card.

24. On 14 October 2013 the Baku Administrative-Economic Court no. 1 allowed the applicant's claim and ordered the delivery of an identity card to him. The court held that, as the applicant had been registered at a place of residence in the Republic of Azerbaijan before the date of the entry into force of the Law on Citizenship, he should be considered as a citizen of the Republic of Azerbaijan within the meaning of Article 5 of that Law.

25. On 14 January 2014 an identity card of the Republic of Azerbaijan was issued to the applicant.

26. Following an appeal lodged by the SMS, on 8 December 2015 the Baku Court of Appeal quashed the first-instance court's judgment, finding that the applicant's complaint could not be examined by the court. The appellate court held that a similar complaint had already been the subject of court proceedings and that there had been a final decision in that connection. It also found that the identity card delivered to the applicant on the basis of the judgment of 14 October 2013 should be invalidated.

27. On 26 January 2017 the Supreme Court upheld the Baku Court of Appeal's decision of 8 December 2015.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Republic of Azerbaijan

28. At the material time, the relevant provisions of the Constitution provided as follows:

Article 52. Right to citizenship

"A person affiliated to the Azerbaijani State, who has a political and legal relationship with, as well as reciprocal rights and duties in respect of, the Republic of Azerbaijan, is a citizen of the Republic of Azerbaijan. A person born on the territory of the Republic of Azerbaijan or to citizens of the Republic of Azerbaijan is a citizen of the Republic of Azerbaijan. A person is the citizen of the Republic of Azerbaijan if one of his or her parents is a citizen of the Republic of Azerbaijan."

Article 53. Guarantee of the right to citizenship

"I. A citizen of the Republic of Azerbaijan may not be deprived in any case of citizenship of the Republic of Azerbaijan. ..."

B. Law on Citizenship

29. Article 5 § 1 of the Law on Citizenship of 30 September 1998, which entered into force on 7 October 1998, provided as follows:

Article 5. Affiliation to citizenship of the Republic of Azerbaijan

"The following individuals shall be considered citizens of the Azerbaijani Republic:

1) Individuals who held citizenship of the Azerbaijani Republic before the date of the entry into force of the present Law (basis: the registration of the person at a place of residence in the Republic of Azerbaijan before the date of the entry into force of this Law); ..."

30. On 24 June 2008 Article 5 § 1 of the Law on Citizenship was amended as follows:

"1) Individuals who held citizenship of the Azerbaijani Republic before the date of the entry into force of the present Law on condition that the citizen of the Republic of

Azerbaijan was registered at a place of residence in the Republic of Azerbaijan before the date of the entry into force of this Law; ...”

31. In accordance with Article 6 of the Law on Citizenship, the identity card of the Republic of Azerbaijan is a document confirming the citizenship of the Republic of Azerbaijan.

C. Law on Registration at Place of Residence and Stay of 4 April 1996

32. Article 2 of the Law on Registration at Place of Residence and Stay of 4 April 1996, which entered into force on 1 January 1997, provided at the material time that the place of residence of a person is the home, apartment, service place of residence, dormitory, old or disabled people’s home, or other kind of place of residence where a person of full capacity lives permanently or majority of time as the owner, under a rental or lease agreement or on any other basis provided for by the legislation of the Republic of Azerbaijan. Under the Soviet legislation, a citizen was issued with a “registration” (*propiska*) at a particular address, by way of a special seal in his passport attesting to his place of permanent residence for the purposes of domestic law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

33. The applicant complained that the denial of his Azerbaijani citizenship by the domestic authorities, which had refused to issue him an identity card, had amounted to a breach of his rights guaranteed by Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

34. 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

(a) The applicant

35. The applicant submitted that the domestic authorities' refusal to recognise his Azerbaijani citizenship had amounted to a *de facto* deprivation of nationality and had constituted an interference with his rights protected under Article 8 of the Convention. Prior to the adoption of that measure, he had lawfully resided in Azerbaijan for several years and had enjoyed a wide range of social, economic and political rights. However, denial of his citizenship had led to many adverse consequences for him and he had lost many rights, entitlements and benefits enjoyed by citizens.

36. The applicant argued that the interference in question was not in accordance with the law. In particular, although Article 5 of the Law on Citizenship had not set out any distinction between permanent and temporary registration at a place of residence, the domestic authorities had denied his Azerbaijani citizenship on the grounds that the applicant's registration at his place of residence had been a temporary one. That interpretation had also contradicted the provisions of the Law on Registration at Place of Residence and Stay.

37. The applicant also submitted that the domestic authorities had confirmed his Azerbaijani citizenship by putting a stamp in his Soviet passport in 1998 and had consistently treated him as a citizen of the Republic of Azerbaijan between 1991 and 2008. In particular, he had enjoyed the right to vote and had been registered as a reserve military officer. However, the domestic authorities had breached the principle of foreseeability and had created a situation of legal uncertainty by ignoring this initial recognition of his citizenship.

38. Lastly, he pointed out that the interference had not been in any event necessary in a democratic society and the domestic authorities had failed to draw a fair balance between the right of the applicant to respect for his private and family life and the general public interest.

(b) The Government

39. The Government submitted that the right to citizenship is not included in the Convention and Article 8 cannot be read so as to guarantee a right to acquire a particular citizenship. Only an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8. In that connection, the Government considered it necessary to examine whether the domestic decisions had disclosed arbitrariness or had such consequences as might raise an issue under Article 8 of the Convention.

40. They further submitted that the right to citizenship of the Republic of Azerbaijan was established only in accordance with the rules set out in

Article 5 of the Law on Citizenship. The domestic courts had held that Article 5 of the Law on Citizenship had been applicable to those who had been citizens of the Republic of Azerbaijan and had been registered residents in Azerbaijan before its entry into force. As the applicant had not been a citizen of the Republic of Azerbaijan before the entry into force of that Law, his registration in Azerbaijan could not have been a basis on which to establish his right to Azerbaijani citizenship.

41. The Government further submitted that the applicant's participation in elections, possession of immovable property and his Azerbaijani citizenship's being noted in his son's birth certificate cannot be considered grounds to establish his right to Azerbaijani citizenship. Consequently, the Government considered that the domestic authorities' decisions not to recognise the applicant as an Azerbaijani citizen had not been arbitrary in a way which could raise issues under Article 8 of the Convention.

2. *The Court's assessment*

42. The Court reiterates that the notion of "private life" within the meaning of Article 8 of the Convention is a broad concept which embraces multiple aspects of a person's physical and social identity (see *Genovese v. Malta*, no. 53124/09, § 30, 11 October 2011, and *Ramadan v. Malta*, no. 76136/12, § 62, 21 June 2016). Although the right to citizenship is not as such guaranteed by the Convention or its Protocols, it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II; *Genovese*, cited above, § 30; and *K2 v. the United Kingdom* (dec.), no. 42387/13, § 49, 7 February 2017).

43. The Court also considered that the same principles must apply to the revocation of citizenship already obtained, since this might lead to a similar – if not greater – interference with the individual's right to respect for family and private life (see *Ramadan*, cited above, § 85; *K2*, cited above, § 49; and *Alpeyeva and Dzhalagoniya v. Russia*, nos. 7549/09 and 33330/11, § 108, 12 June 2018). In determining whether a revocation of citizenship is in breach of Article 8, the Court addressed two separate issues: whether the revocation was arbitrary, and what the consequences of revocation were for the applicant.

44. In determining arbitrariness, the Court has had regard to whether the revocation was in accordance with the law; whether it was accompanied by the necessary procedural safeguards, including whether the person deprived of citizenship was allowed the opportunity to challenge the decision before courts affording the relevant guarantees; and whether the authorities acted diligently and swiftly (see *Ramadan*, cited above, §§ 86-89; *K2*, cited above, § 50; and *Alpeyeva and Dzhalagoniya*, cited above, § 109).

45. Turning to the circumstances of the present case, the Court observes at the outset that the domestic procedure applied to the applicant was not that of revocation of citizenship, but the refusal of the domestic authorities to issue him with an identity card. In particular, the domestic authorities found that the applicant had never acquired Azerbaijani citizenship and was not a citizen of the Republic of Azerbaijan in spite of the fact that he had been considered a citizen of the Republic of Azerbaijan by various State authorities from 1991 to 2008 and there was a stamp confirming his Azerbaijani citizenship in his Soviet passport (see paragraphs 8 and 10-11 above). In these circumstances, the Court does not find that the qualification of the procedure under domestic law is of crucial importance in the present case, and considers that the above-mentioned principles in respect of the revocation of citizenship are also applicable in the instant case (compare *Alpeyeva and Dzhalagoniya*, cited above, § 109).

46. The Court further notes that, although the applicant did not state that the above-mentioned decision of the domestic authorities rendered him a stateless person, it is clear that the decision to that effect entailed considerable adverse consequences for the enjoyment of various rights by the applicant in his everyday life. That decision also created an uncertainty as regards the legal status of the applicant's stay in Azerbaijan, directly affecting his social identity. The Court therefore finds that the impugned decision amounted to an interference with the applicant's right to respect for private life under Article 8 (see *Alpeyeva and Dzhalagoniya*, cited above, § 115).

47. The Court must now determine whether the impugned decision of the domestic authorities was arbitrary and will examine in that regard whether it was "in accordance with the law" and was accompanied by the necessary procedural safeguards. According to the Court's established case-law, the expression "in accordance with the law" requires that the measure should have some basis in domestic law, and it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Slivenko v. Latvia* [GC], no. 48321/99, § 100, ECHR 2003-X, and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 341, ECHR 2012 (extracts)). Consequently, domestic law must also indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which they are entitled under the rule of law in a democratic society (see *Piechowicz v. Poland*, no. 20071/07, § 212, 17 April 2012, and *Tasev v. North Macedonia*, no. 9825/13, § 36, 16 May 2019).

48. The Court notes that in the present case all the domestic authorities and courts referred to the same legal provision, namely Article 5 (I) of the Law on Citizenship, as the legal basis for determination of the applicant's right to Azerbaijani citizenship. The Government also referred to that

provision before the Court as the relevant applicable law. However, the Court takes note of a significant divergence in the interpretation and application of that provision by the domestic authorities and courts.

49. The Court reiterates that it is not its task to substitute its own interpretation for that of the national authorities, and notably the courts, as it is primarily for the latter to interpret and apply domestic law (see *Seyidzade v. Azerbaijan*, no. 37700/05, § 35, 3 December 2009; *Islam-Ittihad Association and Others v. Azerbaijan*, no. 5548/05, § 49, 13 November 2014; and *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 169, 24 January 2017). Its role is to verify whether the effects of such interpretation are compatible with the Convention. That being so, save in the event of evident arbitrariness, it is not the Court's role to question the interpretation of the domestic law by the national courts (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 49-50, 20 October 2011).

50. In the present case, the Court notes that the domestic authorities refused to issue to the applicant an identity card on the grounds that before the entry into force of the Law on Citizenship the applicant's registration at a place of residence in Azerbaijan had been temporary (see paragraphs 13 and 16 above). At first instance, the Sabunchu District Court held in its judgment of 1 April 2009 that neither the Law on Citizenship, nor the Law on Registration at Place of Residence and Stay drew a distinction between the temporary and permanent registration for that purpose and, therefore, the applicant's right to Azerbaijani citizenship could not be denied on those grounds.

51. The Court observes that in the appeal proceedings the Baku Court of Appeal quashed the District Court's judgment, finding that the permanent nature of the registration was required in order to be considered a citizen of the Republic of Azerbaijan. However, the appellate court did not provide any reasons as regards how it reached this conclusion. Moreover, the appellate court gave no heed to the fact that there was a stamp in the applicant's Soviet passport confirming his Azerbaijani citizenship.

52. As to the Supreme Court's findings, the Court notes that the Supreme Court did not rule on the interpretation of the domestic law concerning the relevance of the permanent nature of the registration. It rather found that the applicant could not be considered a citizen of the Republic of Azerbaijan because, in its interpretation, Article 5 (I) § 1 of the Law on Citizenship of the Republic of Azerbaijan (both in its initial and subsequent wording) contained a double condition, namely having held citizenship of the Azerbaijani Republic before the date of the entry into force of this Law, as well as having being registered at a place of residence in the Republic of Azerbaijan prior to the date of the entry into force of that Law. When applying this double condition to the applicant's case, the Supreme Court also disregarded the fact that the applicant had a stamp

confirming his Azerbaijani citizenship in his Soviet passport. No explanation was given by the Supreme Court for that omission.

53. The Court considers that in the instant case the domestic courts' above-mentioned failure to substantiate their decisions and, more importantly, their failure to take into account – without giving any explanation – such an important factual element as the existence of a stamp in the applicant's Soviet passport confirming his Azerbaijani citizenship prevented the applicant from being recognised as citizen of the Republic of Azerbaijan.

54. In these circumstances the Court cannot but conclude that the denial of Azerbaijani citizenship to the applicant was not accompanied by the necessary procedural safeguards and must be considered as arbitrary.

55. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government submitted that the amount claimed by the applicant was unsubstantiated.

59. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 6,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

60. The applicant claimed EUR 4,500 (EUR 2,000 for the preparation of the application and EUR 2,500 for the preparation of the applicant's observations at the communication stage of the proceedings) for the costs and expenses incurred before the Court. In support of his claim, he submitted a contract agreed with his representative before the Court. According to the contract, the amounts due were to be paid in the event that the Court found a violation of the applicant's rights. The applicant also

requested that any compensation awarded under that head be paid directly into his representative's bank account.

61. The Government considered that the claim was unsubstantiated and excessive. In particular, they submitted that the applicant had failed to produce all the necessary documents in support of his claim and that the costs and expenses had not actually been incurred, because the amount claimed had not been paid by the applicant. They also submitted that the work done by the applicant's representative did not correspond to the amount claimed. The Government asked the Court to dismiss the applicant's claim under this head. Alternatively, they considered that the applicant could claim the total amount of EUR 1,000 under this head.

62. The Court notes at the outset that, although the applicant has not yet actually paid the legal fees, he is bound to pay them pursuant to a contractual obligation. Accordingly, in so far as the lawyer is entitled to seek payment of her fees under the contract, the applicant may claim reimbursement of those fees (see *Pirali Orujov v. Azerbaijan*, no. 8460/07, § 74, 3 February 2011; *Rizvanov v. Azerbaijan*, no. 31805/06, § 89, 17 April 2012; *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017; and *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 371-72, 28 November 2017). 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. However, having regard to the amount of legal work necessary in the present case, the Court considers that the amount claimed in respect of legal fees is excessive and should be satisfied only partially. In these circumstances, having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500, covering costs for the proceedings before the Court, to be paid directly into the bank account of Ms G. Guliyeva, who represented the applicant throughout the proceedings before the Court (see paragraph 2 above).

C. Default interest

63. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative;
- (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President