



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

FIFTH SECTION

CASE OF PAR AND HYODO v. AZERBAIJAN

(Applications nos. 54563/11 and 22428/15)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Unlawful retention by State authorities of undeclared sums of money seized from the applicants by the customs authorities • Seized money transferred to State budget apparently in exchange for termination of criminal proceedings against the applicants and their being allowed to leave Azerbaijan • Arbitrary act of taking money from an accused person

STRASBOURG

18 November 2021

FINAL

18/02/2022

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

In the case of Par and Hyodo v. Azerbaijan,

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Jovan Ilievski,
Ivana Jelić,

Arnfinn Bårdsen, *judges*,
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 54563/11 and 22428/15) 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 a Turkish national, Ms Serpil Par (“the first applicant”), and a Japanese national, Mr Katsunori Hyodo (“the second applicant”) (“the applicants”), on 20 August 2011 and 4 May 2015 respectively;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare the remainder of the applications inadmissible;

the decision of the Turkish Government not to intervene in the case;

the parties’ observations;

Having deliberated in private on 19 October 2021,

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

INTRODUCTION

1. The applications concern the retention by the State authorities of undeclared sums of money seized from the applicants by the customs authorities, and raise issues mainly under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The first applicant was born in 1960 and lives in Istanbul, Turkey. The second applicant was born in 1973 and lives in Yokohama, Japan. They were represented before the Court by Mr M. Mustafayev, a lawyer based in Azerbaijan.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the cases, as submitted by the parties, may be summarised as follows.

I. THE FIRST APPLICANT

5. On 25 May 2010 the first applicant travelled from Istanbul to Baku. According to her, the purpose of the trip was to withdraw money that had been transferred to her bank account in Baku from a company operating in China and to take it in cash to Turkey. The following day the applicant arrived at Heydar Aliyev International Airport in Baku to travel to Istanbul. At the customs checkpoint she declared 39,900 euros (EUR) but failed to declare the sum of EUR 210,100 in her cabin bag, which was being carried by her colleague A.A., also a Turkish national. Upon the discovery of the latter amount, the customs officers drew up a report and seized the money (a copy of the report is not available in the case file).

6. A preventive measure prohibiting the applicant from “leaving her place of residence” was ordered.

7. On 9 August 2010 an investigator of the Investigation Department of the State Customs Committee (“the SCC”) formally charged the applicant with smuggling by an organised group under Article 206.3.2 of the Criminal Code (see paragraph 31 below).

8. According to the applicant, the customs officials informally told her that they would terminate the criminal proceedings against her and that she could return to Turkey if she agreed to transfer the seized amount to the State budget of Azerbaijan.

9. According to the applicant, the application of the above-mentioned preventive measure and the situation as a whole limited her business activities and negatively affected her health. As a result, on 22 September 2010 she signed a written statement addressed to “the authorised State bodies”. She submitted that she was engaged in business activities in Turkey and other countries. She denied forming any group with A.A., who had been unaware of the money in the bag she was carrying and expressed her regret for failing to declare it. The applicant indicated that she “agreed” to transfer the seized amount to the State budget of Azerbaijan while asking the authorities to dismiss the serious charges and bring appropriate charges against her (*verilən ağır ittihamın ləğv edilərək düzgün ittiham irəli sürülməklə*). This request was approved by a notary on the same date.

10. On 23 September 2010 the applicant’s lawyer asked the SCC to terminate the criminal proceedings against her, having regard to her frank confession, her ill health, the fact that she had committed a less serious criminal offence as a first-time offender and her agreement to transfer the seized amount to the State budget.

11. On the same date the investigator charged the applicant with the less serious offence of smuggling under Article 206.1 of the Criminal Code (see paragraph 31 below). In doing so, the investigator did not refer to the decision of 9 August 2010 (see paragraph 7 above), but it appears that the new charge replaced the previous one.

12. On 24 September 2010 the investigator decided to terminate the criminal proceedings against the applicant on account of a change of circumstances (*şəraitin dəyişməsi ilə bağlı*), under Article 74 of the Criminal Code (see paragraph 30 below). The decision stated that the applicant, having been engaged in business activities and having previously travelled to Azerbaijan on numerous occasions, had committed the criminal offence of smuggling by failing to declare the sum of EUR 210,100. The decision further stated that the applicant had confessed to committing the above-mentioned criminal offence, that she had given up the money in question, which was the object of the offence, in favour of the State and that no damage had been inflicted on citizens' or the State's interests as a result of the offence.

13. On an unspecified date the applicant left Azerbaijan.

14. On 5 January and 7 February 2011 the applicant asked the investigator to send her a copy of the decision terminating the criminal proceedings against her and to return the sum of EUR 210,100 to her. Having received no reply, on 18 April 2011 she lodged a complaint against the investigator with the Yasamal District Court under the judicial supervision procedure provided for by Article 449 of the Code of Criminal Procedure, ("the CCrP") asking to have his actions, in particular his failure to return her money, declared unlawful.

15. On 17 May 2011 the Yasamal District Court dismissed the complaint without any reasoning, merely noting that there had been no unlawfulness in the investigator's actions.

16. The applicant lodged an appeal, arguing that the money in question had been brought to Azerbaijan lawfully from abroad and had been in her bank account there. Relying on Articles 51 and 206.1 of the Criminal Code and Article 132.0.4 of the CCrP (see paragraphs 28 and 31-32 below), the applicant argued that there was nothing in the case file to show that the money had been acquired by criminal means, and that therefore it could not be confiscated. She further argued that the transfer to the State budget of the money in question could not be regarded as a "change of circumstances".

17. On 22 June 2011 the Baku Court of Appeal upheld the first-instance court's decision. It held that the written request by the applicant had been submitted voluntarily. No further appeal lay against the appellate court's decision.

II. THE SECOND APPLICANT

18. On 27 March 2011 the second applicant travelled from Istanbul to Baku. According to the applicant, he brought cash with him which he had withdrawn from his bank account in Japan but had not declared upon his arrival because no one had asked him to do so. Since he wanted to buy immovable property in Azerbaijan, he converted most of his money into

Azerbaijani manats (AZN) at a bank in Baku. On 30 March 2011 the applicant arrived at Heydar Aliyev International Airport to travel to Istanbul. At the customs checkpoint the customs officials discovered in his bag the sum of AZN 248,300, which he had failed to declare. That amount was seized by the officials. When asked if he had anything else to declare, the applicant admitted that he had different amounts in several foreign currencies (AZN 8,865.96 in total). Those amounts were also seized by the officials, who drew up a report on the matter (a copy of the report is not available in the case file).

19. On 4 April 2011 the applicant was formally charged with smuggling under Article 206.1 of the Criminal Code.

20. On 29 April 2011 the applicant's lawyer asked the SCC to terminate the criminal proceedings against him and to return his money. He submitted that the applicant wished to buy immovable property in Azerbaijan and had withdrawn the money from his bank account in Japan. The lawyer presented similar arguments to those put forward in the first applicant's appeal to the Baku Court of Appeal (see paragraph 16 above). In support of his arguments, he also referred to a judgment given by the Court of Appeal on 6 February 2007 in criminal proceedings instituted under Article 206.1 of the Criminal Code against another individual (see paragraph 35 below for details).

21. On 21 May 2011 the applicant revoked the power of attorney given to his lawyer. It appears that the lawyer was not informed of the revocation.

22. On 23 May 2011, apparently without his lawyer's involvement, the applicant signed a statement written in Azerbaijani and in Japanese addressed to the head of the SCC, whereby he asked for the termination of the criminal proceedings against him and assistance with his return to Japan while expressing his willingness to transfer the sum of AZN 248,300 to the State budget.

23. On 23 June 2011 the investigator decided to terminate the criminal proceedings against the applicant, referring to the same provision of the Criminal Code and to similar grounds to those put forward in the first applicant's case (see paragraph 12 above). The investigator also decided to return to the applicant the remainder of the seized money (different amounts in foreign currencies – see paragraph 18 above) because he had verbally declared them.

24. On an unspecified date the applicant left Azerbaijan.

25. Two years later, on 20 June 2013 the applicant lodged a complaint against the Investigation Department of the SCC with the Yasamal District Court under the judicial supervision procedure, asking for the termination of the criminal proceedings against him on various grounds, in particular because there had been no criminal offence, and for the return of the seized money. In addition to his previous arguments (see paragraph 20 above), the applicant complained that investigative steps had been taken in the absence

of his lawyer and that there had been no legal basis for the transfer of his money to the State budget.

26. At the court hearing, N.A., a translator who had accompanied the applicant several times at the SCC, submitted that, during their previous visit there, the applicant had informed him that the investigator had instructed him to come without a lawyer or a translator on his next visit.

27. On 14 November 2013 the Yasamal District Court dismissed the complaint, finding briefly that the investigator's decision had been lawful and that there was no proof as regards any pressure against the applicant. On 3 October 2014 the Baku Court of Appeal upheld that decision without addressing the applicant's arguments. A copy of the appellate court's decision was served on the applicant on 8 December 2014.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE 2000 CRIMINAL CODE

28. Article 51 of the Code, which was in force at the material time, defined confiscation as the compulsory taking by the State, without any compensation, of (i) instruments and means used for the commission of a criminal offence, (ii) objects of a crime and (iii) property acquired by criminal means. It could be applied only where it was provided for under specific provisions of the Code.

29. Article 62 provided that a court could apply a more lenient sentence than the one provided for under specific provisions of the Code because of, *inter alia*, the existence of exceptional circumstances relating to the purpose and motive of the crime, the role of the accused in committing the criminal offence and other circumstances substantially reducing the danger to the public posed by the criminal offence.

30. Article 74 of the Code, as in force at the material time, provided that a person who had committed a minor or a less serious criminal offence for the first time could be released from criminal liability if it was established that the criminal offence or the person who had committed it no longer posed a danger to the public on account of a change of circumstances.

31. Under Article 206.1, as in force at the material time, smuggling, that is, the movement of large amounts of goods or other objects across the customs border of the Azerbaijan Republic, committed by concealing such goods from customs or combined with the non-declaration or inaccurate declaration of such goods, carried a criminal penalty of up to five years' imprisonment. Article 206.3.2, as in force at the material time, provided for a criminal penalty of five to eight years' imprisonment, with or without confiscation, for smuggling by an organised group.

II. THE 2000 CODE OF CRIMINAL PROCEDURE

32. Article 132.0.4 of the Code of Criminal Procedure, which was in force at the material time, provided that money or valuables which were acquired by criminal means or were the object of a crime had to be directed, on the basis of a court judgment, towards paying for damage inflicted as a result of the criminal offence, or transferred to the State if the victim was unknown.

33. Article 449 of the Code of Criminal Procedure provided that procedural acts or decisions of the authority conducting the criminal proceedings, including, among others, the investigator, could be contested before the supervising courts.

III. THE LAW ON CURRENCY VALUATION AND THE RULES ON IMPORT TO AND EXPORT FROM THE REPUBLIC OF AZERBAIJAN OF CURRENCY ASSETS BY PHYSICAL PERSONS

34. Article 11 of the Law on Currency Valuation of 21 October 1994 (“the Law”) and Article 3 of the Rules on Import to and Export from the Republic of Azerbaijan of Currency Assets by Physical Persons, approved by the National Bank of Azerbaijan on 18 March 2002, which were in force at the material time, provided that non-residents could take out of Azerbaijan a portion of the money previously brought in cash or transferred to Azerbaijan in an amount up to the equivalent of 50,000 United States dollars (USD) in cash, without paying any duties, by declaring it to the customs authorities. Amounts exceeding the equivalent of USD 50,000 that had previously been brought to Azerbaijan in cash could be transferred abroad subject to the presentation of an official certificate from a bank or other credit institution of the country from which the money had been brought confirming that the money in question had been issued in cash to the person. Article 11 of the Law also provided that non-residents had the right to transfer abroad currency assets previously transferred to Azerbaijan without any obstacles.

IV. DOMESTIC CASE-LAW

35. In a judgment of 6 February 2007 (case no. 2-182/2007), the Court of Appeal quashed a first-instance court’s judgment convicting O.C. under Article 206.1 of the Criminal Code, sentencing him to one and a half years’ imprisonment and ordering the confiscation of the undeclared money (USD 64,900). The court concluded that even though O.C. had failed to declare the money in question, it was neither acquired by criminal means nor the object of a crime. It therefore ordered the return of the money and,

applying Article 62 of the Criminal Code, sentenced O.C. to a fine of AZN 2,000.

36. In a judgment of 20 April 2010 (case no. 1(102)-191/10), the Supreme Court upheld an appellate court's judgment ordering the return to F.O. of an undeclared sum of money (USD 160,000) that had been confiscated from him. The Supreme Court found that the origin of the money had not been disputed and that none of the scenarios listed in Article 51 of the Criminal Code existed in F.O.'s case. It also added that the confiscation of property could be ordered only under specific provisions of the Code and that Article 206.1 of the Code did not provide for such confiscation as a penalty.

37. In its judgments of 11 July 2017 (case no. 1(003)-273/2017) and 3 October 2017 (case no. 1(003)-367/2017), the Khazar District Court ordered the return of undeclared money seized by the customs authorities to A.G. (USD 25,000) and I.A. (EUR 68,000). It noted, *inter alia*, that the money in question had not been acquired by criminal means and that Article 206.1 of the Criminal Code did not provide for confiscation as a penalty. Applying Article 62 of the Criminal Code, it sentenced A.G. and I.A. to fines of AZN 1,000 and AZN 2,000 respectively.

THE LAW

I. JOINDER OF THE APPLICATIONS

38. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

39. The applicants complained that their money had, in fact, been confiscated unlawfully by the domestic authorities, in violation of Article 6 of the Convention and Article 1 of Protocol No. 1. The Court considers that this complaint should be examined solely under Article 1 of Protocol No. 1 (compare *Adzhigovich v. Russia*, no. 23202/05, § 17, 8 October 2009), which 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.”

A. Admissibility

40. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

41. The applicants argued that they had transferred their money to the State budget not voluntarily, but under pressure from the customs authorities, which had told them informally that the criminal proceedings against them would be terminated if they did so. They argued that the text of the requests submitted by them also showed that the transfer had been conditional on “the dismissal of serious charges and the bringing of appropriate charges” in respect of the first applicant and “the termination of criminal proceedings” in respect of the second applicant.

42. The applicants further argued that Article 206.1 of the Criminal Code did not provide for the confiscation of undeclared sums of money and that the domestic law allowed such confiscation only if the money had been the object or instrument of a crime, which did not apply in their respective cases. They also referred to several domestic court decisions where the courts had ordered the return of undeclared sums to their owners in similar circumstances.

43. The Government argued that the applicants had voluntarily transferred the amounts in question to the State budget. They submitted that the first applicant had declared EUR 39,900, which at the material time was the equivalent of USD 50,000 – the amount allowed to be taken out of the country by non-residents. This fact proved that she had known the maximum amount of money she could take out of the country under domestic law. They further argued that the first applicant’s statement had been duly approved by a notary, which showed that she had fully understood her actions and had not performed them under any duress.

44. As to the second applicant, the Government submitted that his statement expressing willingness to transfer the money to the State had been written both in Azerbaijani and in Japanese and had been sent to the SCC through the Embassy of Japan in Azerbaijan. Accordingly, any allegation that it had been written against his will was untrue. They further submitted that the fact that the second applicant had lodged his complaint with the domestic court two years after the date of the termination of the criminal proceedings against him (see paragraph 25 above) cast doubt on the truthfulness of his assertions.

45. The Government argued that, in contrast to *Ismayilov v. Russia* (no. 30352/03, 6 November 2008), referred to by the first applicant in her

application, there had been no confiscation, and therefore no deprivation of possessions, in the present cases.

2. *The Court's assessment*

46. The Court reiterates that Article 1 of Protocol No. 1 guarantees in substance the right of property and comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of possessions. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see, for example, *Ismayilov*, cited above, § 28, and *Karapetyan v. Georgia*, no. 61233/12, § 30, 15 October 2020).

47. It is not disputed that the money in question constituted the applicants' "possessions". It also appears undisputed that the amounts at issue, while initially seized by customs officers, remained the property of the applicants until the moment when they were transferred to the State budget on the basis of statements made by the applicants, not pursuant to any formal legal act emanating from the authorities (see paragraphs 9 and 22 above). Against that background, the parties are in dispute as to the existence of an interference by the State authorities. The Court must therefore first determine whether in the present cases there has been an interference by the State authorities with the applicants' rights under Article 1 of Protocol No. 1. While doing so, it is compelled to look behind the appearances and investigate the realities of the situation before it.

48. The Court firstly notes that there was a clear link between the applicants' allegedly involuntary statements to transfer the seized amounts to the State budget and developments in the criminal proceedings against them. The first applicant was prevented from leaving Azerbaijan pending the criminal proceedings against her and, more than two months after the seizure of the undeclared money, was formally charged with smuggling by an organised group – a criminal offence which carried a criminal penalty of five to eight years' imprisonment (see paragraphs 6-7 above). It was precisely one day after submitting the request by which she "agreed" to transfer the seized money to the State budget, that she was charged with a less serious offence and, on the next day, the criminal proceedings against her were terminated (see paragraphs 11-12 above). The Court observes a similar scenario in the second applicant's case. Several days after revoking the power of attorney given to his lawyer, the second applicant submitted a

similar request to the SCC expressing his willingness to transfer the seized amount to the State budget, after which the criminal proceedings against him were swiftly terminated (see paragraphs 21-23 above). The text of the applicants' requests containing their statements about transferring their money to the State budget clearly show that they made those statements with the hope to obtain favourable developments in the criminal proceedings against them - the first applicant asked to have the serious charges against her dismissed, while the second applicant sought the termination of the criminal proceedings against him, which could have led to up to five years' imprisonment (see paragraphs 9 and 22 above). Moreover, there was also a clear link between the termination of the criminal proceedings and the applicants being able to leave Azerbaijan (see paragraphs 12-13 and 23-24 above).

49. The Court further observes that the decisions on terminating the criminal proceedings against the applicants referred to a change of circumstances and stated that the applicants no longer posed a "danger to the public", a statement which appears to have been mainly based on the applicants' written requests to transfer their money to the State budget.

50. Having regard to the above-mentioned factors, the sequence of events and, in particular, the termination of the criminal proceedings against the applicants immediately after the submission of their requests to transfer the money to the State budget, the Court considers that the applicants' allegations that they submitted those requests under pressure while facing the risk of a prison sentence and a prolonged ban on leaving Azerbaijan are plausible. It is also significant that, as is apparent from the case files, neither of the applicants was accompanied by a lawyer while signing the requests. As to the Government's arguments that the approval of the first applicant's statement by a notary and the submission of the second applicant's request in an additional Japanese version proved that there had been no pressure on them, the Court considers that, in the light of the above-mentioned elements, it is highly probable that the applicants had taken those steps under the customs authorities' instructions and not of their own motion. Therefore, the Court is of the view that the situation in the applicants' respective cases whereby their money was transferred to the State budget, apparently in exchange for the termination of criminal proceedings against them and, consequently, their being allowed to leave Azerbaijan, amounted to an interference with the applicants' right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1.

51. The parties did not make submissions on the question of the rule of Article 1 of Protocol No. 1 under which the case should be examined. The Court considers that there is no need to resolve this issue because the principles governing the question of justification are substantially the same, involving as they do the legitimacy of the aim of any interference, as well as its proportionality and the preservation of a fair balance (compare *Denisova*

and *Moiseyeva v. Russia*, no. 16903/03, § 55, 1 April 2010, and *Credit Europe Leasing Ifn S.A. v. Romania*, no. 38072/11, § 71, 21 July 2020).

52. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be “lawful” (see *Baklanov v. Russia*, no. 68443/01, § 39, 9 June 2005, and *Rafiq Aliyev v. Azerbaijan*, no. 45875/06, § 119, 6 December 2011).

53. The Court observes that, after having left Azerbaijan, both applicants brought proceedings before the domestic courts in Azerbaijan asking for the return of their money, but to no avail. The domestic courts, without any adequate examination, briefly dismissed the applicants’ arguments that they had been unlawfully forced to transfer their money to the State budget.

54. The Court notes that plea bargaining or out-of-court settlement procedure in criminal proceedings are possible in some legal systems (see, for a comparative study in the Council of Europe member States, *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, §§ 62-75, ECHR 2014 (extracts)). Under these mechanisms it is possible to change or drop charges against the accused person by reaching an agreement which is entered into voluntarily and is in accordance with applicable procedural and substantive rules. It appears that no equivalent mechanisms exist in Azerbaijan (*ibid.*, § 62).

55. The Court accepts that its power to review compliance with domestic law is limited as it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention “incorporates” the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection. Unless the interpretation is arbitrary or manifestly unreasonable, the Court’s role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018, with further references). However, the Court notes in the present cases that when holding that the applicants had voluntarily transferred their money to the State budget, the domestic courts failed to refer to any legal provision which could have served as a legal basis for such a procedure.

56. Likewise, the Government failed to cite any legal provision that could have served as a basis for the transfer of such substantial amounts by the applicants to the State budget.

57. Moreover, the applicants had submitted their written requests in the absence of consultation with a lawyer or any other procedural guarantees. In such case, the Court cannot but conclude that the situation at hand amounted to an arbitrary act of taking money from an accused person.

58. Having regard to the above considerations, the Court finds that the interference in the present cases with the applicants’ property rights cannot

be considered “lawful” within the meaning of Article 1 of Protocol No. 1 to the Convention. This finding makes it unnecessary to examine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the applicants’ fundamental rights.

59. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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*

61. The first applicant claimed 210,100 euros (EUR), representing the seized amount, and EUR 142,686, representing the accrued interest on that amount over a period of eight years, in respect of pecuniary damage. The second applicant claimed 248,300 Azerbaijani manats (AZN) (approximately EUR 127,500 at the time of submission of the claim), representing the seized amount, and EUR 156,429, representing the accrued interest on that amount over a period of seven years, in respect of pecuniary damage. In both cases, the calculations referred to Articles 439.3 (performance of monetary obligations) and 449.1 (liability for failure to perform monetary obligations) of the Civil Code and the Central Bank’s benchmarks.

62. The Government argued that the relevant amounts had been transferred to the State budget voluntarily, and that the applicants had therefore not suffered any pecuniary damage. Nonetheless, if the Court found a violation of the applicants’ rights under the Convention, they could only claim the amounts which they had transferred at the relevant time, excluding any interest and differences in exchange rates. The Government further argued that the benchmark rates claimed were not supported by any official documents and the calculations appeared to be incorrect and unreasonable. Lastly, they argued that the applicants’ reliance on the above-mentioned provisions of the Civil Code was irrelevant since they concerned the performance of monetary obligations.

63. The Court has found that the sums of EUR 210,100 and AZN 248,300 were taken from the first applicant and the second applicant respectively, in breach of Article 1 of Protocol No. 1. While it is true that

the applicants in all likelihood committed an offence by failing to declare those amounts at the customs and while there may have been a legal basis in Azerbaijani law to order the applicants to pay fines to be deducted from the above amounts seized by the customs, the authorities did not pursue that legal possibility and there is therefore no basis for the Court to deduct any part of the amounts claimed. It therefore has no choice but to accept the claim for pecuniary damage in this part and awards the first applicant EUR 210,100 and the second applicant EUR 127,500.

64. As to the accrued interest claimed by the applicants, the Court observes that those claims were based on irrelevant provisions of the Civil Code which concerned the performance of monetary obligations under civil law. In such circumstances, and in the absence of any supporting documents as to properly quantified amounts, the Court rejects the applicants' claims in this part.

2. Non-pecuniary damage

65. Each applicant also claimed EUR 50,000 in respect of non-pecuniary damage.

66. The Government argued that those claims were unsubstantiated and excessive.

67. The Court considers that in the circumstances of the present cases the finding of a violation of Article 1 of Protocol No. 1 to the Convention constitutes in itself sufficient just satisfaction (compare *Boljević v. Croatia*, no. 43492/11, § 54, 31 January 2017, and *Sadocha v. Ukraine*, no. 77508/11, § 44, 11 July 2019).

B. Default interest

68. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

5. *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 amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 210,100 (two-hundred and ten thousand one hundred euros) to the first applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 127,500 (one hundred and twenty-seven thousand five hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
- (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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Martina Keller
Deputy Registrar

Síofra O'Leary
President