

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

FIRST SECTION

CASE OF AHMADOV v. AZERBAIJAN

(Application no. 53957/12)

JUDGMENT

STRASBOURG

1 June 2023

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



In the case of Ahmadov v. Azerbaijan,

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

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 53957/12) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 9 August 2012 by an Azerbaijani national, Mr Latif Abbasali oglu Ahmadov ("the applicant"), who was born in 1962, lives in Sumgayit and was represented by Mr A. Gasimli, a lawyer practising in Azerbaijan;

the decision to give notice of the application to the Azerbaijani Government ("the Government"), represented by their Agent, Mr. Ç. Əsgərov;

the parties' observations;

Having deliberated in private on 9 May 2023,

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

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention regarding the State's alleged failure to protect his property rights.

2. The applicant had a 50% share in the ownership of a wedding hall in Sumgayit.

3. On 4 September 2007 his nephew, S.F., concluded a loan agreement with Texnikabank OJSC ("the Bank") for an amount of 450,000 Azerbaijani manats (AZN – approximately 350,000 euros (EUR) at the time).

4. On the same date the applicant's brother, Y.A., acting on the basis of a power of attorney ("the POA") of 30 August 2007, which had allegedly been given to him by the applicant, concluded a mortgage agreement with the Bank in relation to the loan agreement signed by S.F. The terms of the mortgage agreement stipulated that the applicant's 50% share in the wedding hall would serve as collateral for the loan taken out by S.F and the interest accrued on it.

5. On 4 March 2009 S.F. repaid the first loan in full and concluded a second loan agreement with the Bank for an amount of 600,000 United States dollars, following which the mortgage agreement was amended to state that it also covered the new loan.

6. According to the applicant, the loan and mortgage agreements were entered into only formally by his brother and nephew; in reality the loans had been organised by a government official who had managed to exert undue

influence on the applicant's brother and nephew and who had arranged the falsification of the POA by conspiring with and bribing officials from the Office of the Khizi District Public Notary ("the public notary") and the Bank. By the time of the proceedings mentioned below, the official concerned had committed suicide.

7. On 29 July 2010 the applicant lodged a claim with the Sumgayit City Court challenging the validity of the POA, the mortgage agreement and its subsequent amendment by arguing that Y.A. had acted on the basis of a forged POA as the applicant had been abroad on the date of its issuance and therefore could not have signed it.

8. On 20 August 2010 the Bank lodged a counterclaim against the applicant and S.F. stating that the latter had defaulted on the loan agreement and requesting on that ground the sale of the applicant's property at auction in accordance with the terms of the mortgage agreement.

9. On 19 April 2011 the Sumgayit District Court, having examined both claims together, dismissed the applicant's claim and upheld the Bank's claim, finding that the applicant could not have been unaware of the fact that his property had been mortgaged since 2007. In its judgment the court did not touch upon the issue of the validity of the POA. The facts part of the judgment also mentioned a letter from the public notary stating that they had no record of such a POA being made. However, the court made no reference to that letter in its reasoning.

10. The applicant appealed, arguing that since he had not given the POA, as demonstrated by the fact that he had been outside Azerbaijan on the day of its issuance, the mortgage agreement concluded by his brother was void and could not be enforced. He specifically referred to the public notary's letter and to a letter he had obtained from the State Border Service of the Republic of Azerbaijan ("the SBS") confirming that he had been outside the country from 28 August to 23 October 2007.

11. On 6 September 2011 the Sumgayit Court of Appeal upheld the first-instance court's judgment, reiterating its reasoning. The appellate court's judgment was silent as to the applicant's specific submissions regarding the alleged falsification of the POA.

12. On 9 February 2012 the Supreme Court upheld the appellate court's judgment, agreeing with its argumentation.

13. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention of a violation of his right to a reasoned decision and of being deprived of his property as a result of the domestic courts' manifestly unreasonable decisions.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

15. The general principles concerning the right to a reasoned judgment have been summarised in the case of *Mazahir Jafarov v. Azerbaijan* (no. 39331/09, §§ 33-36, 2 April 2020).

16. The Court has previously held that a judgment in civil proceedings that fails to give any convincing reasons in respect of inconsistent evidence and an applicant's counter-arguments falls short of the guarantees of a fair trial required under Article 6 § 1 of the Convention (see *Carmel Saliba v. Malta*, no. 24221/13, § 79, 29 November 2016).

17. Moreover, although the courts are not required to give a detailed answer to every argument advanced by the complainants, the parties to judicial proceedings can expect to receive a specific and explicit reply to arguments which are decisive for the outcome of those proceedings (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017).

18. In the present case, the Court notes that throughout the domestic proceedings the applicant asserted that the POA had been false as he had been outside Azerbaijan at the time of its issuance. In support of his arguments he relied on the letters from the SBS and the public notary (see paragraphs 9-10 above).

19. Thus, it was important for the domestic courts to establish whether the POA had in fact been issued by the applicant, since the mortgage agreement that eventually led to his loss of property was concluded on its basis. In other words, if the POA had been found to be void, the mortgage agreement covering the loan would also have had to be declared void as having been concluded on the basis of a forged document.

20. However, in spite of the applicant's explicit submissions and the aforementioned evidence, the domestic courts remained silent as to the validity of the POA and instead made an assumption without any evidentiary basis that it was improbable that the applicant had been unaware of the mortgage agreement. They failed to explain why they decided to attach no importance to the applicant's claims, nor did they provide any compelling reasoning as to why they disregarded the evidence produced by him. Given that that evidence *prima facie* appears to support the applicant's arguments and was therefore important to the outcome of the proceedings, the courts were required under the Convention to provide relevant and adequate reasons for dismissing his complaints.

21. As to the Government's argument that the applicant had never applied to the prosecuting authorities regarding the alleged falsification of the POA,

the Court fails to see its relevance for the applicant's complaint under Article 6 of the Convention. Even if the applicant had lodged a criminal complaint, the domestic courts would have been obliged to examine the validity of the POA within the civil proceedings – which they omitted to do. In this respect, the Court also notes that Article 265.4 of the Code of Civil Procedure provides that a court, if it discovers upon examination of a civil claim the appearance of criminal elements in the actions of the parties to the case or other persons, must deliver a special ruling (*xüsusi qərardad*) informing a public prosecutor thereof. In other words, if the domestic courts established that the POA had been falsified, they had a legal basis for applying to the prosecuting authorities regarding the presence of the elements of a crime in the actions of the persons who had prepared it. They could also have advised the applicant to lodge a separate criminal complaint with the relevant authorities with regard to the falsification of the POA. However, it does not appear that either of those possibilities was considered by the courts since they simply ignored the matter altogether in their reasoning.

22. In conclusion, the Court considers that the domestic courts' decisions in the present case failed to provide any adequate reasons for dismissing the applicant's arguments and the evidence he had brought forward, which were relevant to the outcome of the proceedings.

23. There has accordingly been a violation of Article 6 § 1 of the Convention.

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

24. Having regard to the conclusion reached above under Article 6 § 1 of the Convention and the parties' submissions, the Court considers that there is no need to give a separate ruling on the admissibility and merits of the applicant's complaint under Article 1 of Protocol No. 1 to the Convention (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 1,000,000 euros (EUR) in respect of pecuniary damage for the loss of his share in the property.

26. The Government contested that amount as unsubstantiated.

27. Having regard to its findings concerning Article 6 § 1 of the Convention and the flaws in the proceedings before the domestic courts, the Court considers that it cannot speculate as to whether or not the applicant's claims for pecuniary damage are justified (see, *mutatis mutandis*, *Pavlović and Others v. Croatia*, no. 13274/11, § 58, 2 April 2015).

28. Moreover, Rule 60 of the Rules of Court requires that any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part. In the present case, the applicant failed to submit any calculations or any evidence in support of his claim for pecuniary damage.

29. The Court therefore rejects the claim in respect of pecuniary damage.

30. However, the Court also notes that Article 431-1.2.2 of the Code of Civil Procedure provides for the possibility of reopening domestic proceedings following a finding by the Court of a violation of the Convention (see *Azadliq and Zayidov v. Azerbaijan*, no. 20755/08, § 56, 30 June 2022).

31. The applicant further claimed EUR 100,000 in respect of non-pecuniary damage.

32. The Government submitted that the finding of a violation would constitute in itself sufficient reparation in respect of any non-pecuniary damage sustained.

33. The Court considers that the applicant must have sustained non-pecuniary damage which is not sufficiently compensated for by the finding of a violation. Ruling on an equitable basis, it awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

34. The applicant also claimed EUR 1,200 in respect of costs and expenses incurred before the Court.

35. The Government argued that, as the applicant had failed to produce any evidence that the legal costs had been actually incurred, his claim under this head should be dismissed.

36. Having regard to the documents in its possession and in particular a copy of a contract concluded with the lawyer, the Court considers it reasonable to award EUR 500 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 1 of Protocol No. 1 to the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 1 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President