

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

FIFTH SECTION

CASE OF GASIMOV v. AZERBAIJAN

(Application no. 8937/09)

JUDGMENT

STRASBOURG

10 November 2016

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



In the case of Gasimov v. Azerbaijan,

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

Faris Vehabović, *President,*
Khanlar Hajiyev,
Carlo Ranzoni, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 11 October 2016,

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

PROCEDURE

1. The case originated in an application (no. 8937/09) 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 an Azerbaijani national, Mr Eldar Kocheri oglu Gasimov (*Eldar Köçəri oğlu Qasımov* − "the applicant"), on 29 January 2009.

2. The applicant was represented by Mr J. Suleymanov, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged that the domestic authorities had failed to carry out an effective investigation into his daughter's death.

4. On 18 September 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Baku.

6. The applicant's daughter (S.J.) was born in 1979 and was married to an officer of the Ministry of National Security ("the MNS").

A. Death of the applicant's daughter

7. On an unspecified date in 2006 S.J. brought a civil action against her husband for divorce. In November 2006 the divorce proceedings were pending before the Binagadi District Court.

8. On 15 November 2006 S.J. fell from the balcony of a flat on the seventh floor of a block of flats.

9. At 1 p.m. on 15 November 2006 S.J. was admitted to the Clinical Medical Centre where she was placed in the intensive care unit. On arrival at the hospital, she was diagnosed with traumatic brain injury, blunt trauma of the stomach, fractures of various bones and traumatic shock.

10. On 20 November 2006 S.J. was transferred to the Oil Workers' Hospital where she died on the same day.

B. Criminal investigation into the death of the applicant's daughter

11. On 16 November 2006 criminal proceedings were instituted under Article 125 (incitement to suicide) of the Criminal Code by the Binagadi district prosecutor's office.

12. On 20 November 2006 the investigator in charge of the case ordered a post-mortem forensic examination of S.J., which was carried out on the same day. Forensic report no. 143 dated 14 December 2006 showed that S.J.'s death resulted from traumatic shock caused by rupture of the bladder and numerous bone fractures. The expert also found that there were various injuries on S.J.'s body which might have been sustained because of her fall from the balcony or in other circumstances.

13. It appears from the documents in the case file that in November 2006, and in January, March and April 2007, various people, including the applicant, S.J.'s husband, colleagues and relatives, were questioned as witnesses by the prosecuting authorities within the framework of the criminal proceedings.

14. In the meantime, on 6 February 2007 the criminal case was assigned to the Baku city prosecutor's office.

15. On 24 and 26 February 2007 an investigator at the Baku city prosecutor's office ordered a commission to carry out a forensic examination of S.J.'s death.

16. In April 2007 a histological forensic examination was conducted on the basis of twenty-two samples taken from S.J.'s organs, including the stomach, lungs, liver and intestines. The experts issued forensic histological report no. 318 dated 26 April 2007, concluding that there were toxic changes in S.J.'s liver and digestive organs.

17. In June 2007 a commission, formed on the basis of the investigator's decisions of 24 and 26 February 2007 and composed of three experts, issued forensic report no. K81/2007. The experts, who conducted the examination on the basis of S.J.'s medical records from 15 to 20 November 2006 and the results of the post-mortem and histological forensic examinations, concluded that the cause of the death was "general poisoning" (*ümumi intoksikasiya*) which had resulted from endogenic toxic substances developed in the body owing to multiple traumas and toxic substances

introduced into the digestive organs. The experts confirmed the existence of various injuries on S.J.'s body, finding that there was a causal link between the injuries she had sustained and her death.

18. On 24 August 2007 the investigator ordered a new forensic examination of S.J.'s death by a commission. In particular, he asked the experts to determine the cause of death, to establish what kind of injuries had been on S.J.'s body and in what order they had been inflicted. He further asked them to determine which of those injuries had been sustained as a result of the fall and which of them had been caused by a blunt object.

19. A commission composed of four experts issued forensic report no. K69/2007 which confirmed the findings of forensic report no. K81/2007 on the cause of death. In that connection, the experts concluded that the death had resulted from poisoning. However, they pointed out that they were not able to determine the origin of the poisoning because no blood sample or sample from the digestive system had been taken for chemical forensic examination during the forensic examination conducted immediately after the death. The experts further concluded that some of the injuries found on S.J.'s body could not have been sustained as a result of a fall and had been inflicted by a blunt object beforehand.

20. In the meantime, in April and November 2007 two forensic trace evidence examinations were carried out at the request of the investigator. The forensic reports, dated 10 April and 29 November 2007, took into consideration the place where S.J.'s body had made contact with the ground and concluded that she could have jumped from the balcony. Moreover, a forensic report dated 10 May 2007 concluded that S.J. had been feeling low before her death and that signs of depression and neurological issues had been observed at that time.

21. On 5 February 2008 a face-to-face confrontation was held between the applicant and the father of S.J.'s husband.

22. On 5 February 2008 the investigator ordered a new commission to carry out a forensic examination of S.J.'s death. A commission composed of five experts issued forensic report no. K69/2008 which repeated the findings of the previous reports about it being impossible to identify the origin of the poisoning. The experts also confirmed the findings of the previous reports as to the existence on S.J.'s body of various injuries sustained by a blunt object and not by a fall.

23. On 30 March 2008 the criminal case was assigned to the Serious Crimes Unit of the Prosecutor General's Office.

24. On 28 July and 16 October 2008 the applicant's lawyer wrote to the Prosecutor General's Office complaining of the ineffectiveness of the investigation. The lawyer noted that he had been threatened by telephone because S.J.'s husband, an MNS officer, was involved in the criminal case. He also asked the prosecuting authorities to identify the people who had made the threatening calls.

25. By a decision of 2 September 2008, the investigator granted the applicant victim (*zərər çəkmiş şəxs*) status.

26. On 24 September 2008 the applicant lodged a request with the investigator in charge of the case to reclassify it under Article 120 of the Criminal Code (murder). In particular, relying on the findings of the forensic reports that some of the injuries on S.J.'s body had been sustained before her fall from the balcony, the applicant stated that S.J. had been beaten beforehand and had then been thrown from the balcony by force. He also pointed out that she had been poisoned in the hospital, which had caused her death.

27. On 6 October 2008 the applicant wrote again to the investigator, reiterating his request of 24 September 2008.

28. By a decision of 6 October 2008, the investigator refused to grant the applicant's request, finding that at that stage of the proceedings there was no evidence that S.J. had been murdered.

29. On 27 October 2008 the applicant appealed against that decision to the Deputy Prosecutor General, reiterating his previous complaints.

30. By a letter of 10 November 2008, the Deputy Prosecutor General rejected the request.

31. By a letter of 22 November 2008, the Prosecutor General informed the applicant that numerous investigative steps had been taken and that the investigation was waiting for the determination of the origin and nature of the poisoning.

32. On 12 December 2008 the applicant complained to the Deputy Prosecutor General, noting that contrary to the requirements of the criminal law he had not received any reasoned decision concerning his request of 27 October 2008, but had received only a letter dated 10 November 2008 which had informed him that his request had been rejected.

33. On 30 December 2008 the applicant complained to the Prosecutor General. In particular, he claimed that the investigation had not been effective, that the Deputy Prosecutor General's decision against reclassifying the criminal case as murder under Article 120 of the Criminal Code had not provided sufficient reasoning, and that the investigation had failed to examine S.J.'s blood sample.

34. On 27 October 2009 the applicant brought a civil action against the Prosecutor General's Office, asking the court to order the prosecuting authorities to carry out an effective investigation into his daughter's death.

35. On 29 October 2009 the Sabail District Court refused to admit the claim, finding that a complaint about acts and omissions by the prosecuting authorities could not be examined in civil proceedings.

36. On 5 November 2009 the investigator ordered a new commission to carry out a forensic examination of S.J.'s death. A commission composed of ten experts issued forensic report no. 239/KES dated 25 November 2009 which reiterated the findings of the previous forensic examinations about it

being impossible to identify the origin of the poisoning and the existence of various injuries on S.J.'s body which had been sustained before her fall from the balcony. The experts further found that it had been possible to administer the toxic substances to S.J. while she was in the clinic.

37. In the meantime, it appears from the documents in the case file that in September and December 2008, and in January, April, October and November 2009, the prosecuting authorities questioned various people as witnesses, including the experts who had participated in the forensic examinations, S.J.'s husband and his relatives.

38. On 19 December 2009 a new forensic trace evidence examination conducted at the request of the investigator confirmed that S.J. could have fallen to the place her body was found as a result of jumping from the balcony.

39. On 25 January 2010 the applicant again requested that the prosecuting authorities reclassify the case as murder under Article 120 of the Criminal Code, taking into consideration the fact that the death had resulted from an unidentified poison and that various injuries on S.J.'s body had been sustained before her fall from the balcony.

40. By a letter of 2 March 2010, the Deputy Prosecutor General rejected the request.

41. On 8 December 2010 the applicant reiterated his request for the reclassification of the case as murder under Article 120 of the Criminal Code.

42. By a decision of 17 December 2010, the investigator refused to grant the applicant's request, finding that at that stage of the proceedings there was no evidence that S.J. had been murdered.

43. In December 2010 the prosecuting authorities questioned the experts who had participated in the forensic examinations concerning S.J.'s death as witnesses.

44. On 6 January 2011 the investigator ordered the examination of the jacket that S.J. had been wearing on 15 November 2006 in order to establish whether there were any bloodstains on it. On 11 January 2011 the forensic expert issued forensic report no. 07/2011-MTBS concluding that there was no trace of blood on the jacket.

45. It appears from the documents in the case file that the applicant received a letter dated 14 February 2011 from the Prosecutor General's Office in reply to his numerous letters to the prosecuting authorities about the progress of the investigation. The prosecuting authorities informed him in that letter that the investigation would be carried out effectively and that he would be informed of its results.

46. On 16 March 2011 the applicant lodged a criminal complaint in court about the ineffectiveness of the investigation.

47. On 17 March 2011 the Sabail District Court refused to admit the complaint, finding that the applicant's lawyer had failed to join his power of attorney to the application.

48. On an unspecified date the applicant brought a civil action with Baku Administrative Economic Court No. 1, reiterating his previous complaints.

49. On 26 July 2011 the court refused to admit the claim, finding that it could not be examined in administrative proceedings, and transferred it to the Sabail District Court.

50. In September and October 2011 the prosecuting authorities again questioned as witnesses the experts who had participated in the forensic examinations concerning S.J.'s death.

51. By a decision of 13 September 2011, the Sabail District Court decided to transfer the case to the appellate court to determine which court had jurisdiction.

52. On 12 October 2011 the Baku Court of Appeal held that the applicant's claim could not be examined in civil proceedings.

53. On 30 December 2011 the Supreme Court upheld the Baku Court of Appeal's decision of 12 October 2011.

54. In the meantime, on 28 December 2011 the investigator decided to terminate the criminal proceedings for failure to identify the perpetrator of the crime, although all the relevant investigative actions had been carried out.

55. On 16 February 2012 the applicant lodged a complaint against the investigator's decision with the Nasimi District Court, asking the court to overrule it.

56. By a decision of 6 March 2012 the Nasimi District Court upheld the applicant's complaint and overruled the investigator's decision. The court found that the investigator had failed to comply with the supervising prosecutor's instructions and had unlawfully terminated the criminal proceedings. The court also referred to the Court's case-law, pointing out that the domestic authorities should conduct an effective investigation in accordance with their Convention obligations. It appears from the Nasimi District Court's decision of 6 March 2012 that in the proceedings before the court the investigator stated that on 27 January 2009 a request for a chemical forensic examination in the United Kingdom to determine the type of poisoning had been sent to the Ministry of Justice, but that no reply had been received. The investigator further stated that the investigation of the case had become very difficult as a long time had gone by since the commission of the crime and some items of evidence related to the case had been lost when it had been transferred from the Binagadi district prosecutor's office to the Prosecutor General's Office.

57. On 30 November 2012 the investigator again decided to terminate the criminal proceedings relying on the same grounds. The wording of the investigator's decision was identical to that of 28 December 2011.

58. On 5 February 2013 the applicant appealed against the decision. He complained, *inter alia*, that he had not been duly informed of the investigator's decision to terminate the criminal proceedings, that the investigation, which had lasted for more than six years, had not been effective, that although S.J. had been beaten and then thrown from the balcony the criminal case had not been examined under Article 120 of the Criminal Code as murder, and that the investigation had failed to establish the origin of the poisoning.

59. On 27 February 2013 the Nasimi District Court granted the applicant's appeal and overruled the investigator's decision of 30 November 2012. In that connection, the court held that the investigator should not have terminated the criminal proceedings by relying solely on the fact that it had been impossible to identify the perpetrator of the crime and had to take all the relevant steps to identify that person. The court also found that the investigation had been inactive for a long period of time and that the applicant had been provided with the investigator's decision of 30 November 2012 only on 26 January 2013.

60. On 30 November 2013 the investigator again decided to terminate the criminal proceedings, relying on the same grounds. The investigator's decision was identical in its wording to the previous ones.

61. On 7 February 2014 the applicant appealed against that decision, reiterating his previous complaints.

62. On 21 February 2014 the Nasimi District Court overruled the investigator's decision of 30 November 2013. The court found that the investigator had taken no action to identify the perpetrator of the crime since its decision of 27 February 2013.

63. At the time of the most recent communication with the parties − that was on 31 March 2015 when the last observation was filed in this case by the Government - the criminal proceedings were still pending.

II. RELEVANT DOMESTIC LAW

A. The Criminal Code

64. Article 125 (incitement to suicide) provides that inciting a person, who is dependent on the inciter for material, professional or other reasons, to commit or attempt suicide by means of cruel treatment of that person, or by means of the systematic denigration of his or her dignity, or by means of threats, is a crime punishable by imprisonment for a term of three to seven years.

65. Article 120 § 1 (murder) of the Criminal Code provides that murder is a crime punishable by imprisonment for a term of nine to fourteen years.

B. The Code of Criminal Procedure ("the CCrP")

66. By virtue of Article 87 § 6 of the CCrP, a person recognised as a victim has various procedural rights, and is entitled to submit material to the criminal case file, object to actions by the prosecuting authority, lodge applications, have access to transcripts and documents in the case file, be informed and obtain copies of any procedural decision by the prosecuting authority affecting his rights and interests (including a decision to discontinue proceedings), and lodge appeals against procedural steps or decisions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

67. Relying on Articles 2, 6, 13 and 14 of the Convention, the applicant complained that the domestic authorities had failed to conduct an effective investigation into the death of his daughter. The Court considers that the present complaint falls to be examined solely under Article 2 of the Convention, the relevant part of which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life ..."

A. Admissibility

68. The Government submitted that the applicant could not be considered as a victim within the meaning of the Convention as the domestic courts had already overruled the investigator's decisions concerning the termination of the criminal proceedings, finding that they had lacked sufficient reasoning. In that connection, the Government also drew the Court's attention to the fact that the domestic courts had referred to the Court's case-law in their decisions on the investigator's decisions.

69. The applicant contested the Government's objection maintaining his complaint.

70. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and*

Decisions 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

71. The Court thus notes that the mere fact that the domestic courts overruled the investigator's decisions terminating the criminal proceedings and declared them unlawful cannot deprive the applicant of his victim status under the Convention, as there was no clear acknowledgement of a violation of Article 2 of the Convention and no redress was afforded for such a violation. The foregoing considerations are sufficient to enable the Court to conclude that the applicant is still a victim within the meaning of Article 34 of the Convention in respect of his complaint under Article 2.

72. 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*

73. The applicant maintained that the criminal investigation had been ineffective.

74. The Government did not make any submissions on the merits.

2. *The Court's assessment*

(a) General principles

75. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be an effective official investigation when individuals have been killed as a result of the use of force, either by State officials or private individuals (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 103, ECHR 1999-IV; *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V; and *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 62, 15 January 2009). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II). The same standards also apply to investigations in cases where a person dies in suspicious circumstances in which the State's positive obligation under Article 2 is at stake (see *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, § 102, 17 December 2009, and *Lari v. the Republic of Moldova*, no. 37847/13, § 34, 15 September 2015).

76. The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III). This is not an obligation of result, but of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death, or identify the person or people responsible, will risk falling foul of this standard. Whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention (see, for example, *mutatis mutandis*, *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 63). Moreover, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice. In all cases, the next of kin of the victim must be involved in the procedure to such an extent as is necessary to safeguard his or her legitimate interests (see *Tsintsabadze v. Georgia*, no. 35403/06, § 76, 15 February 2011).

77. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-104, *Reports* 1998-VI, and *Adalı v. Turkey*, no. 38187/97, § 224, 31 March 2005). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating suspicious deaths may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Mikayil Mammadov*, cited above, § 105).

(b) Application to the present case

78. Turning to the circumstances of the present case, the Court notes that the applicant complained of the inadequacy of the investigation into the death of his daughter carried out by the domestic authorities.

79. The Court notes that although on 16 November 2006, only one day after S.J.'s fall from the balcony, criminal proceedings were instituted under Article 125 (incitement to suicide) of the Criminal Code and numerous investigative actions, such as questioning witnesses and carrying out various forensic examinations, were taken by the investigation, the criminal proceedings were still pending at the time of the most recent communication with the parties and the perpetrator of the crime had not been identified.

80. In that connection, the Court observes a number of shortcomings in the criminal investigation carried out by the domestic authorities.

81. Firstly, the Court notes that the prosecuting authorities failed to secure all the evidence concerning the death of the applicant's daughter. In particular, they failed to take the relevant steps for establishing the origin of the poisoning which caused her death. The Court notes that no blood sample was taken from S.J. during the post-mortem forensic examination conducted

immediately after her death on 20 November 2006. As the forensic experts noted, the failure to secure the evidence subsequently prevented them from establishing the origin of the poisoning which caused the death (see paragraph 19 above). No explanation was provided by the Government for that omission. The Court further observes that although on 27 January 2009 the prosecuting authorities made a request to the Ministry of Justice for a chemical forensic examination in the United Kingdom to determine the type of poisoning, no such examination was conducted (see paragraph 56 above).

82. Secondly, the Court notes that the domestic authorities also failed to examine all the relevant evidence concerning the incident in a timely manner. In particular, it was only on 6 January 2011, more than four years after the start of the criminal proceedings (see paragraph 44 above), that the investigator ordered the examination of the jacket that S.J. had been wearing on 15 November 2006 in order to establish whether there were any bloodstains on it. No explanation was provided by the Government for such a delay.

83. Thirdly, the Court considers that the investigation was not carried out promptly as the prosecuting authorities remained inactive for long periods of time. In particular, it appears from the documents in the case file that although the criminal proceedings were pending no investigative action was carried out between December 2009 and December 2010. Furthermore, the overall length of the criminal investigation, which lasted at least eight years and four months, is such that any meaningful investigation can no longer be pursued (see *Aliyeva and Aliyev v. Azerbaijan*, no. 35587/08, § 78, 31 July 2014).

84. Lastly, the Court notes that, as acknowledged by the Nasimi District Court, the prosecuting authorities failed to inform the applicant of the progress of the investigation and to provide him in a timely manner with the relevant decisions taken within the framework of the criminal proceedings (see paragraph 59 above).

85. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the death of the applicant's daughter. It accordingly holds that there has been a violation of Article 2 under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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."

87. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb.

Done in English, and notified in writing on 10 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	Faris Vehabović
Acting Deputy Registrar	President