

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

THIRD SECTION

CASE OF HASANOV v. AZERBAIJAN

(Application no. 61496/12)

JUDGMENT
(Merits)

STRASBOURG

21 January 2025

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



In the case of Hasanov v. Azerbaijan,

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

Darian Pavli*, President*,
Lətif Hüseynov,
Úna Ní Raifeartaigh*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 61496/12) 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 21 September 2012 by an Azerbaijani national, Mr Nizami Hasanov ("the applicant"), who was born in 1950, lives in Baku and was represented by Mr F. Agayev, a lawyer based in Azerbaijan;

the decision to give notice of the complaints under Article 6, Article 8 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç.Əsgərov, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 17 December 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the allegedly unlawful expropriation of the applicant's property by the Nasimi District Executive Authority ("the NDEA") for the purpose of constructing a new Jewish synagogue.

2. According to the case file, the applicant was the owner of two flats in Baku with a total surface area of 141 sq. m and 68.7 sq. m. He had combined the flats and used the property for business purposes.

3. The facts of the present case are similar in several respects to those in *Khalikova v. Azerbaijan* (no. 42883/11, 22 October 2015). By an order of 3 March 2010, the NDEA established a commission for the relocation of residential and non-residential properties in certain streets in Baku in order to build a new synagogue for the local Jewish community. The commission was also charged with calculating and paying compensation, and relocating residents. The applicant was offered 1,500 Azerbaijani manats (AZN) per square metre of his property in compensation, which he rejected. Following that, in May 2010 the applicant's property was demolished without his consent. On 6 November 2010 the applicant signed a contract of sale with V.A., a lawyer representing the head of the NDEA, by which he transferred ownership of his property and received AZN 263,100. The applicant was paid

AZN 1,500 per square metre of his property, the surface area of which the NDEA considered to be 175.4 sq. m.

4. The applicant brought civil proceedings against the NDEA and other State authorities in the Nasimi District Court, seeking, *inter alia*, the invalidation of the contract of sale (see paragraph 3 above); an award of compensation in respect of pecuniary and non-pecuniary damage; and the restoration of the flats to their original state. The applicant contended that the contract of sale had been entered into under duress after the demolition of the flats in question and complained that the compensation paid to him had been too low. In support of his claims he submitted a valuation report by a private company dated 23 April 2010, in which the total surface area of the applicant's flats was indicated as 209.7 sq. m and their market value estimated at AZN 472,308.

5. At the first-instance court hearing, the applicant also submitted that although the total surface area of his property was 209.7 sq. m, he had only been paid compensation for 175.4 sq. m.

6. By a judgment of 6 September 2011, the court dismissed the applicant's claims. It concluded that the contract of sale had been signed in accordance with the provisions of domestic law and of the parties' own free will, and that there was no reason to declare it null and void. However, the court held that the applicant should have been paid AZN 314,550 instead of AZN 263,100 as the total surface area of the flats in question was 209.7 sq. m. It added that the applicant had the right to bring separate proceedings in that regard.

7. On 16 November 2011 and 27 March 2012 respectively the Baku Court of Appeal and the Supreme Court dismissed the applicant's subsequent appeals.

8. The applicant complained under Article 1 of Protocol No. 1 to the Convention that he had been unlawfully deprived of his property, which also included the plot of land underlying the building on which his flats were situated.

9. The applicant also complained under Articles 6, 8 and 13 of the Convention that the domestic courts had failed to examine his arguments as to the unlawfulness of the demolition of his property, that he had been unlawfully deprived of his home and that he had not had an effective domestic remedy at his disposal for protecting his Convention rights.

THE COURT'S ASSESSMENT

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

10. The Court notes that the properties in question were flats situated in an apartment building. It is undisputed that those flats constituted the applicant's "possessions". As to the plot of land, under the provisions of

domestic law the land underlying and attached to buildings of that kind was in the common, shared ownership of the owners of the flats in the building, who did not have the right to divide in kind or sell their shares or to perform other acts aimed at the separate alienation of their respective shares. The Court has already held that such shares could not be regarded as separate "possessions" as such because they were attached to an apartment in the building of which they formed a part, thus constituting one whole property (see *Bagirova and Others v. Azerbaijan*, nos. 37706/17 and 5 others, § 38, 31 August 2023). It follows that this part of the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

11. The Court further notes that the part of the complaint concerning the flats 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.

12. The general principles concerning Article 1 of Protocol No. 1 have been summarised, *inter alia*, in *Khalikova* (cited above, §§ 134-36) and *Maharramov v. Azerbaijan* (no. 5046/07, §§ 56-60, 30 March 2017).

13. In *Khalikova* (cited above, §§ 137-41) the Court found that the expropriation of the applicant's property had not been carried out in compliance with "conditions provided for by law". It concluded, in particular, that (i) the Baku City Executive Authority ("the BCEA") did not have the authority to expropriate private property; (ii) no lawful expropriation order had been issued by a competent State authority; and (iii) the interference with the applicant's possessions had thus constituted a *de facto* deprivation of possessions. The Court also found it irrelevant that a contract of sale had been signed between the applicant and a natural person acting on behalf of the BCEA after the demolition of her property. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case. It thus considers that the expropriation of the applicant's property was not carried out in compliance with "conditions provided for by law".

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

II. OTHER COMPLAINTS

15. As concerns the complaints under Articles 6, 8 and 13 of the Convention (see paragraph 9 above), having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; see also *Bagirova and Others*, cited above, §§ 55-56).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant claimed 950,000 euros (EUR) in respect of pecuniary damage, EUR 100,000 in respect of non-pecuniary damage, 2,500 Azerbaijani manats (AZN) for legal costs and AZN 210 for postal expenses.

17. The Government submitted that the applicant had already received compensation in respect of his property (see paragraph 3 above) and asked the Court to reject his claims in respect of pecuniary damage. They further submitted that the amounts claimed in respect of non-pecuniary damage and costs and expenses were excessive.

18. The Court considers that the question of the application of Article 41 is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the part of the complaint under Article 1 of Protocol No. 1 to the Convention concerning the flats admissible, and the remainder of the complaint inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaints under Articles 6, 8 and 13 of the Convention;

4. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision; accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicant to submit, within three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and delegates to the President of the Committee the power to fix the same if need be.

Done in English, and notified in writing on 21 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Darian Pavli President