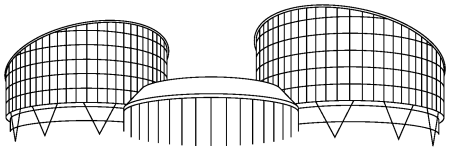

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANNAGI HAJIBEYLI v. AZERBAIJAN

(Application no. 2204/11)

JUDGMENT

STRASBOURG

22 October 2015

FINAL

22/01/2016

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

In the case of Annagi Hajibeyli v. Azerbaijan,

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

András Sajó, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 29 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 2204/11) 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 Annagi Bahadur oglu Hajibeyli (*Ənnağı Bahadur oğlu Hacıbəyli* – "the applicant"), on 24 December 2010.

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

3. The applicant alleged, in particular, that he had been arbitrarily refused registration as a candidate in the 2010 parliamentary elections.

4. On 24 June 2013 the application was communicated to the Government. The applicant and the Government each submitted written observations on the admissibility and merits of the case. Observations were also received from the International Commission of Jurists (the ICJ), to whom the President had given leave to intervene as a third party in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Baku.

6. The applicant was nominated by the coalition of the Popular Front and Musavat parties to stand as a candidate in the parliamentary elections of 7 November 2010 and applied for registration as a candidate in the single-mandate Saatli Electoral Constituency No. 62.

A. Refusal to register the applicant as a candidate

7. As the Electoral Code required that each nomination as a candidate for parliamentary elections be supported by a minimum of 450 voters, on 5 October 2010 the applicant submitted to the Constituency Electoral Commission ("the ConEC") fourteen signature sheets containing 675 voter signatures collected in support of his candidacy.

8. Before the ConEC's decision on the question of the applicant's registration as a candidate, the accuracy of the signature sheets and other registration documents submitted by the applicant were to be first examined by a special working group (*işçi qrupu*) established by the ConEC. Although the applicant had requested to be present during the process of the examination by the working group, this took place without him.

9. By a decision of 11 October 2010 the ConEC refused the applicant's request for registration as a candidate. The ConEC found that, according to the opinion of the working group, a number of submitted supporting signatures were invalid, and that the remaining valid signatures numbered fewer than 450. In particular, 597 of the 675 signatures had been examined, and it was found that 257 of those signatures were invalid.

10. The following reasons were given in the ConEC working group's examination record dated 10 October 2010: (a) three signatures were "repeat signatures"; (b) seven signatures were invalid because there were uncertified corrections of them on the signature sheets; (c) twelve signatures were invalid owing to incorrect personal information provided concerning those voters; (d) one signature was invalid because it was on the wrong line; (e) 201 signatures were not authentic because they had been made repeatedly by the same individuals who had already signed the signature sheets; and (f) thirty-three signatures were invalid for "other" (unspecified) reasons.

B. Appeal to the Central Electoral Commission

11. On 13 October 2010 the applicant lodged a complaint with the Central Electoral Commission ("the CEC") against the ConEC decision to refuse registration. He complained, *inter alia*, of the following:

(a) 257 signatures were deemed invalid on the basis of a mere visual examination, without any additional adequate investigation;

(b) the members of the ConEC working group were not real experts. The head of the working group was a school gym teacher, while two other

members were an employee of a statistics committee and an employee of the passports department of a local police office;

(c) there was no explanation as to what constituted "other" reasons for declaring thirty-three of the signatures invalid;

(d) contrary to the requirements of Article 59.3 of the Electoral Code, the applicant had not been invited to participate in the process of examination of the signature sheets by the ConEC working group, and thus had been deprived of the right to give the necessary explanations to the experts;

(e) contrary to the requirements of Article 59.13 of the Electoral Code, he had not been provided with a copy of the results of the examination of the signature sheets at least twenty-four hours prior to the ConEC meeting to decide on the applicant's registration;

(f) the applicant's presence at the ConEC meeting of 11 October 2010 had not been ensured.

12. Enclosed with his complaint to the CEC, the applicant submitted written statements by over 400 voters whose signatures had been declared invalid, affirming the authenticity of their signatures. However, according to the applicant, those statements were not taken into consideration by the CEC.

13. The CEC conducted another examination of the signature sheets using members of its own working group. The applicant was not invited to participate in this process. According to the working group's findings, a total of 238 signatures were considered to be invalid. It appears that 233 of those were considered inauthentic because they had allegedly been made repeatedly by the same persons in the name of other persons, and the remaining five were found to be invalid owing to the voters' incorrect personal information.

14. The applicant was not invited to the CEC meeting dealing with his complaint against the ConEC decision of 11 October 2010.

15. By a decision of 16 October 2010 the CEC dismissed the applicant's complaint and upheld the ConEC decision of 11 October 2010. It found that, on the basis of the findings of the CEC's own working group, 238 out of 675 signatures submitted by the applicant were invalid and that the remaining 437 valid signatures were below the minimum number required by law.

16. The applicant was given copies of the CEC decision and the working group opinion on 17 October 2010.

C. Appeals to domestic courts

17. On 19 October 2010 the applicant lodged an appeal against the CEC decision with the Baku Court of Appeal. He reiterated his complaints made

before the CEC concerning the ConEC decision and procedures. Moreover, he raised, *inter alia*, the following complaints:

(a) contrary to the requirements of the electoral law, the CEC had failed to notify him of its meetings and to ensure his presence during the examination of the signature sheets and the examination of his complaint;

(b) the CEC had ignored the written statements by over 400 voters confirming the authenticity of their signatures and had failed to take them into account; and

(c) the CEC had failed to provide any reasoning and had not addressed any of the applicant's arguments in its decision.

18. By a judgment of 22 October 2010 the Baku Court of Appeal dismissed the applicant's appeal. The court dismissed the applicant's arguments as irrelevant or unsubstantiated, and found that there were no grounds for quashing the CEC's decision.

19. On 25 October 2010 the applicant lodged a further appeal with the Supreme Court, reiterating his previous complaints and arguing that the Baku Court of Appeal had not carried out a fair examination of the case and had delivered an unreasoned judgment.

20. On 28 October 2010 the Supreme Court dismissed the applicant's appeal as unsubstantiated, without examining his arguments in detail and finding no grounds for doubting the findings of the electoral commissions and the Court of Appeal.

D. The Court proceedings and seizure of the applicant's case file

21. In addition to the applicant in the present case, at the material time the applicant's representative Mr Intigam Aliyev was representing twenty-seven other applicants in cases concerning the 2010 parliamentary elections and a number of applicants in other cases before the Court. Mr Aliyev has also lodged an application on his own behalf in a case relating to the 2010 elections (application no. 66684/12).

22. In August 2014 the prosecution authorities launched an investigation into the activities of a number of NGOs, including the Legal Education Society, an NGO headed by Mr Aliyev.

23. On 7 August 2014 the Nasimi District Court issued a search warrant authorising the search of Mr Aliyev's office in the Legal Education Society and seizure of "legal, financial, accounting and banking documents, letters and contracts, reports on execution of grant contracts and tax documents relating to [the organisation's] establishment, structure, functioning, membership registration, receipt of grants and other financial aid, and allocation of granted funds, as well as computers, disks, USB keys and other electronic devices storing relevant information ..."

24. On 8 August 2014 Mr Intigam Aliyev was arrested after questioning by an investigator of the Prosecutor General's Office in connection with the

criminal proceedings instituted against him under Articles 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (abuse of power) of the Criminal Code. On the same day, the Nasimi District Court ordered his detention pending trial. He remains in detention while the criminal proceedings against him are pending. The circumstances relating to Mr Aliyev's arrest and detention are the subject of a separate application brought by him before the Court (application no. 68762/14).

25. On 8 and 9 August 2014 the investigation authorities conducted a search of Mr Aliyev's home and office pursuant to the Nasimi District Court's search warrant of 7 August 2014, seizing, *inter alia*, a large number of documents from his office, including all the case files relating to the pending proceedings before the Court, which were in Mr Aliyev's possession and which concerned over 100 applications in total. The file relating to the present case, which, it appears, included copies of all the documents and correspondence between the Court and the parties, was also seized in its entirety. No adequate inventory of the seized document files relating to the Court proceedings was made in the search and seizure records of 8 and 9 August 2014.

26. On an unspecified date Mr Aliyev lodged a complaint with the Nasimi District Court, claiming that the search had been unlawful. He complained that the investigator had failed to register each seized document as required by the relevant law and had taken the documents without making an inventory. He further complained about the seizure of the documents and files relating to the ongoing court proceedings before the Court and the domestic courts.

27. On 12 September 2014 the Nasimi District Court dismissed Mr Aliyev's claim. It held that the searches had been conducted in accordance with the relevant law. As to the seizure of the documents relating to the cases pending before the Court and the domestic court, it found that they could not be returned to the applicant at this stage of the proceedings. Following an appeal, on 23 September 2014 the Baku Court of Appeal upheld the first-instance court's decision of 12 September 2014.

28. On 25 October 2014 the investigation authorities returned a number of the case files concerning the applications lodged before the Court, including the file relating to the present case, to Mr Aliyev's lawyer. The investigator's relevant decision specified that "since it has been established that among documents seized on 8 and 9 August 2014 there were files concerning applications by a number of individuals and organisations lodged with the European Court of Human Rights, which have no relation to the substance of the criminal proceedings [against Mr Intigam Aliyev], [those files] have been delivered to [Mr Aliyev's lawyer] Mr Javad Javadov".

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

29. The relevant domestic law and international documents concerning the rules and requirements for candidate registration, as well as observations made during the 2010 parliamentary elections in Azerbaijan, are summarised in *Tahirov v. Azerbaijan* (no. 31953/11, §§ 23-31, 11 June 2015).

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

30. On 16 September 2014 the Government submitted a unilateral declaration with a view to resolving the issues raised by the present application. They further requested the Court to strike the application out of the list of cases in accordance with Article 37 of the Convention.

31. The unilateral declaration had been submitted before the applicant raised the complaint under Article 34 of the Convention in the present case. It therefore does not cover the issues pertinent to that complaint.

32. The applicant disagreed with the terms of the unilateral declaration. He noted that it did not contain any undertakings as to general or individual measures to be taken in respect of his case. He argued that the actual intention behind the Government's declaration was to avoid the Court's examination of the case on its merits and to prevent the supervision by the Committee of Ministers of the execution by the Government of the Court's judgment on the merits.

33. The Court notes that it may be appropriate in certain circumstances to strike out an application, or part thereof, under Article 37 § 1 on the basis of a unilateral declaration by the respondent Government even where the applicant wishes the examination of the case to be continued. Whether this is appropriate in a particular case depends on whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, § 75, ECHR 2003-VI).

34. Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these

measures on the case at issue. It may also be material whether the facts are in dispute between the parties, and, if so, to what extent, and what prima facie evidentiary value is to be attributed to the parties' submissions on the facts. Other relevant factors may include whether in their unilateral declaration the respondent Government have made any admissions in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which the Government intend to provide redress to the applicant. As to the last-mentioned point, in cases in which it is possible to eliminate the effects of an alleged violation and the respondent Government declare their readiness to do so, the intended redress is more likely to be regarded as appropriate for the purposes of striking out the application, the Court, as always, retaining its power to restore the application to its list as provided in Article 37 § 2 of the Convention and Rule 44 § 5 of the Rules of Court (ibid., § 76; see also *Rantsev v. Cyprus and Russia*, no. 25965/04, § 195, ECHR 2010 (extracts)).

35. The foregoing factors are not intended to constitute an exhaustive list of relevant factors. Depending on the particular facts of each case, it is conceivable that further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 of the Convention (see *Tahsin Acar*, cited above, § 77).

36. Finally, the Court reiterates that its judgments serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties. Although the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (see *Rantsev*, cited above, § 197, with further references).

37. In considering whether it would be appropriate to strike out the present application on the basis of the unilateral declaration, the Court makes the following observations.

38. The Court emphasises the serious nature of the allegations made in the present case. It further observes, from a more general standpoint, that various types of alleged violations of the rights protected under Article 3 of Protocol No. 1 to the Convention have been an object of recurrent and relatively numerous complaints brought before the Court in cases against Azerbaijan after each parliamentary election that has taken place since the country's ratification of the Convention. The Court notes that this appears to disclose an existence of systematic or structural issues which call for adequate general measures to be taken by the authorities. No such measures are mentioned in the unilateral declaration submitted by the respondent Government in the present case in respect of the specific issues complained

of in connection with the 2010 elections (contrast *Gambar and Others v. Azerbaijan* (dec.), nos. 4741/06, 19552/06, 22457/06, 22654/06, 24506/06, 36105/06, and 40318/06, 9 December 2010).

39. Having studied the terms of the Government's unilateral declaration, the Court considers that the proposed declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols do not require it to continue its examination of this particular case.

40. Therefore, the Court refuses the Government's request for it to strike the application out of its list of cases under Article 37 of the Convention, and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

41. The applicant complained under Article 3 of Protocol No. 1 to the Convention and Article 13 of the Convention that his right to stand as a candidate in free elections had been violated because his request for registration as a candidate had been refused arbitrarily. The Court considers that this complaint falls to be examined only under Article 3 of Protocol No. 1 to the Convention and that no separate examination is necessary under Article 13 (compare *Namat Aliyev v. Azerbaijan*, no. 18705/06, § 57, 8 April 2010). Article 3 of Protocol No. 1 to the Convention reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A. Admissibility

42. 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

43. The Government submitted that the Contracting States enjoyed a wide margin of appreciation under Article 3 of Protocol No. 1 in establishing conditions for exercising the right to stand for election. The requirement to collect at least 450 signatures in support of a candidate had a

legitimate aim of reducing the number of fringe candidates and avoiding "overcrowded" lists of registered candidates in order to prevent confusion among the electorate.

44. The Government argued that the domestic electoral law contained sufficient safeguards preventing the adoption of arbitrary decisions to refuse registration. Firstly, signature sheets were examined by working groups specially created by electoral commissions in accordance with Article 59.2 of the Electoral Code. These working groups consisted of experts and "specialists" of the relevant State authorities, most of whom were employees of the Centre of Forensic Science of the Ministry of Justice, the Ministry of the Interior, the State Register of Immovable Property and other agencies. Before taking up their duties as working group members, they had been trained by experts with the "appropriate knowledge and experience in the relevant field". Secondly, the electoral law required that a working group meeting had to be open to the public, that the nominated candidate be given the opportunity to attend if he wished to do so, and that the working group's documents on the results of examination of signature sheets be made available to the nominated candidate twenty-four hours before the electoral commission met to decide whether to register the candidate. Thirdly, the law required the working group to indicate the basis for invalidating signatures. Fourthly, the nominated candidate had a right to lodge appeals with the CEC and courts against a decision refusing the registration. All of the above combined to form a sufficient body of safeguards preventing arbitrary refusals to register candidates.

45. In the present case, both the ConEC and CEC working groups found that a large number of signatures collected in support of the applicant were invalid. Therefore, the decision to refuse registration was justified, owing to the applicant's failure to produce at least 450 valid signatures in his support. In his appeal to the Baku Court of Appeal, where he challenged the findings of the electoral commissions' working groups, the applicant failed to request the court to appoint an expert examination by a graphologist. Both the Baku Court of Appeal and the Supreme Court reached a correct conclusion that there were no reasons to doubt the findings of the electoral commissions' working groups.

46. The applicant submitted that, contrary to the requirements of Article 59.3 of the Electoral Code, he had not been informed about the time of the ConEC working group meeting in advance and had not been given the opportunity to attend the meeting, thus depriving him of the opportunity to provide necessary explanations to working group members in order to dispel any doubts over authenticity of the disputed signatures.

47. Furthermore, contrary to the requirements of Article 59.13 of the Electoral Code, the working group documents on the results of examination of signature sheets had not been made available to him prior to the ConEC meeting dealing with his registration request. He was eventually and

belatedly given copies of only some of those documents. Therefore, he was also deprived of the opportunity to correct any shortcomings found by the working group experts in the signature sheets.

48. Most importantly, in the applicant's view, the decisions of the electoral commissions on invalidation of signatures were substantively incorrect, unsubstantiated or arbitrary, for various reasons. Some of the working groups' factual findings were wrong and could be easily rebutted by simply contacting the voter in question and confirming the authenticity of his or her signature. In particular, it was not clear how the commissions and their experts concluded that a number of signatures (201 according to the ConEC, and 233 according to the CEC) had been falsified. There were no specialised handwriting experts among the working-group members and, therefore, their findings that large numbers of signatures were inauthentic were highly subjective and arbitrary. However, the electoral commissions relied on the working-group expert opinions without conducting any further investigation to conclusively establish the authenticity of the impugned signatures. Moreover, a number of signatures were declared invalid on the basis of easily rectifiable errors, without informing the applicant in advance and giving him an opportunity to rectify those errors, as required by the Electoral Code. The invalidation by the ConEC of 33 signatures on "other grounds", without explaining what those grounds were, was unlawful because the Electoral Code provided for an exhaustive list of grounds for invalidation.

49. The applicant further noted that in his appeal to the CEC he had tried to prove the authenticity of a number of signatures by submitting statements by over 400 voters confirming the authenticity of their signatures. Had this information been taken into account and the authenticity of the signatures confirmed, the total number of valid signatures would have exceeded the statutory threshold of 450 signatures. However, the CEC ignored those documents without giving any reasons.

2. The Court's assessment

50. The Court refers to the summaries of its case-law made in the *Tahirov* judgment (cited above, §§ 53-57), which are equally pertinent to the present case.

51. For the purposes of the present complaint, the Court is prepared to accept the Government's submission that the requirement for collecting 450 supporting signatures for nomination as a candidate pursued a legitimate aim of reducing the number of fringe candidates.

52. It remains to be seen whether, in the present case, the procedure for monitoring compliance with this eligibility condition was conducted in a manner affording sufficient safeguards against an arbitrary decision.

53. Having regard to the material in the case file and the parties' submissions, the Court notes that the issues raised by the present complaint

are essentially the same as those examined in the *Tahirov* judgment. The facts of both cases are similar to a significant degree. The Court considers that its analysis and conclusions made in the *Tahirov* judgment also apply to the present case. In particular, the Court noted the existence of serious concerns regarding the impartiality of the electoral commissions, lack of transparency in their activity, and various shortcomings in the procedure (ibid., §§ 60-61), a lack of clear and sufficient information about the professional qualifications and the criteria for appointment of working-group experts charged with the task of examining signature sheets ((ibid., §§ 63-64), failure by the electoral commissions and courts to take any further investigative steps to confirm the experts' opinions on the authenticity or otherwise of signatures ((ibid., § 65), systematic failure by the electoral commissions to abide by a number of statutory safeguards designed to protect nominated candidates from arbitrary decisions (ibid., §§ 66-68 and 69), failure by the electoral commissions and courts to take into account the relevant and substantial evidence submitted by the candidate in an attempt to challenge the working-group experts' findings on the authenticity or otherwise of signatures (ibid., § 69), and the failure by the domestic courts to deal with the appeals in an appropriate manner (ibid., § 70). Having regard to the above, the Court found that, in practice, the applicant in the *Tahirov* judgment was not afforded sufficient safeguards to prevent an arbitrary decision to refuse his registration as a candidate.

54. Having regard to the facts of the present case and their significant similarity to those of the *Tahirov* case on all relevant and crucial points, the Court sees no particular circumstances that could compel it to deviate from its findings in the *Tahirov* case, and finds that in the present case the applicant's right to stand as a candidate was breached for the same reasons as those outlined above.

55. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

56. By a fax of 9 September 2014 the applicant's representative Mr Aliyev introduced a new complaint on behalf of the applicant, arguing that the seizure from his office of the entire case file relating to the applicant's pending case before the Court, together with all the other case files, had amounted to a hindrance to the exercise of the applicant's right of individual petition under Article 34 of the Convention, the relevant parts of which read as follows:

> "The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

1. The Government

57. The Government noted that the case files relating to the proceedings before the Court, including the applicant's, had been taken from Mr Aliyev's office on 9 August 2014 and were in the prosecution authorities' possession for a period of seventy-six days, until 25 October 2014 when they were returned to Mr Aliyev's lawyer.

58. The Government further noted that in the applicant's case by 9 August 2014 the parties had already submitted all the observations, comments, proposals and claims requested by the Court. Accordingly, during the period when the applicant's case file was in the prosecution authorities' possession no correspondence was taking place between the Court and the parties, and the applicant and his lawyer were awaiting the Court's decision. For these reasons, the Government considered that there had been no hindrance by the State of the effective exercise of the applicant's right of application.

2. The applicant

59. The applicant noted that the contents of the case file had no connection with any of the formal criminal charges brought against Mr Aliyev. He further argued that Mr Aliyev's arrest was "part of the [recent] serious crackdown on civil society in Azerbaijan, including the lawyers and human rights [activists]".

60. The applicant submitted that during the searches of 8 and 9 August 2014 the investigators had indiscriminately seized all the documents in Mr Aliyev's office, including his case file. Contrary to the requirements of the domestic rules of criminal procedure, the investigators in charge of the search did not make an inventory of the seized documents in the search record. The applicant noted that on 25 October 2014 some of the documents, including his case file, had been returned to Mr Aliyev's representative, Mr Javadov. However, according to the applicant, some case files relating to applications by other applicants had not been returned.

3. The International Commission of Jurists (ICJ), the third party

61. In their submissions, the ICJ summarised international standards on non-interference with the work of lawyers, enshrined in the UN Basic Principles on the Role of Lawyers, the Draft Universal Declaration on the Independence of Justice (the Singhvi Declaration) and other documents which recognise the role of lawyers as essential agents in the administration of justice. The ICJ noted that, despite such recognition under international law, lawyers in many jurisdictions incur serious risks when carrying out their professional functions.

62. Citing the Court's case-law extensively, the ICJ, intervening, stated that confidentiality of communications between lawyers and their clients was a well-established principle of international human rights law, recognised as an element of the right to a fair trial, as well as of the right to respect for private life, home and correspondence. The significance of lawyer-client confidentiality in any justice system for the effective protection of rights guaranteed under the Convention required particularly close scrutiny of any interference with such confidentiality, including searches of lawyers' premises and seizure of documents.

63. The ICJ further summarised the Court's case-law under Article 34 of the Convention, focusing particularly on the Court's jurisprudence on acts directed at the lawyers or legal representatives of the applicants that were found to have discouraged or impaired the pursuance of an individual's right of petition. The ICJ further stressed that, in assessing the impact of any acts by the authorities which might hinder an applicant's effective exercise of the right of individual application, account should be taken of the national context. In this connection, the intervener pointed to the current situation in Azerbaijan as identified by various international organisations and NGOs who had expressed their growing concern at the treatment of human rights defenders in the country.

B. The Court's assessment

64. According to the Court's case-law, a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Cooke v. Austria*, no. 25878/94, § 46, 8 February 2000, and *Ergi v. Turkey*, 28 July 1998, § 105, *Reports of Judgments and Decisions* 1998-IV).

65. The Court reiterates that Article 34 of the Convention imposes an obligation on a Contracting State not to hinder the right of individual petition. While the obligation imposed is of a procedural nature, distinguishable from the substantive rights set out in the Convention and Protocols, it flows from the very essence of this procedural right that it is open to individuals to complain of its alleged infringement in Convention proceedings. The Court also underlines that the undertaking not to hinder the effective exercise of the right of individual application precludes any interference with the individual's right to present and pursue his complaint before the Court effectively (see *Chaykovskiy v. Ukraine*, no. 2295/06, § 84, 15 October 2009, with further references).

66. It is of the utmost importance for the effective operation of the system of individual petition guaranteed by Article 34 of the Convention that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others*

v. Turkey, 16 September 1996, § 105, *Reports* 1996-IV, and *Kurt v. Turkey*, 25 May 1998, § 159, *Reports* 1998-III). In this context, "any form of pressure" includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention complaint or having a "chilling effect" on the exercise of the right of individual petition by applicants and their representatives (see *Kurt*, cited above, §§ 160 and 164; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV; and *Fedotova v. Russia*, no. 73225/01, § 48, 13 April 2006).

67. Whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case (see *Salman v. Turkey* [GC], no. 21986/93, § 130, ECHR 2000-VII).

68. Furthermore, the Court has repeatedly held that persecution and harassment of members of the legal profession strikes at the very heart of the Convention system. Therefore, searches of lawyers' premises should be subject to especially strict scrutiny (see *Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, § 669, 13 November 2003).

69. The Court has examined a number of cases concerning searches of lawyers' offices under Article 8 of the Convention, finding that such searches amount to an interference with the lawyer's "private life", "home", and "correspondence" (see *Niemietz v. Germany*, 16 December 1992, §§ 29-33, Series A no. 251-B; *Tamosius v. the United Kingdom* (dec.), no. 62002/00, ECHR 2002-VIII; *Sallinen and Others v. Finland*, no. 50882/99, §§ 70-72, 27 September 2005; *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, §§ 43-45, ECHR 2007-IV; and *Aleksanyan v. Russia*, no. 46468/06, § 212, 22 December 2008). To determine whether a search was "necessary in a democratic society", the Court has explored the availability of effective safeguards against abuse or arbitrariness under domestic law, and checked how those safeguards operated in the specific case under examination. Elements taken into consideration in this regard were the severity of the offence in connection with which the search and seizure were effected, whether they were carried out pursuant to a warrant issued by a judge or a judicial officer, whether the warrant was based on reasonable suspicion, and whether its scope was reasonably limited. The Court must also review the manner in which the search was executed, and, where a lawyer's office is involved, whether it was carried out in the presence of an independent observer to ensure that material subject to legal professional privilege was not removed. The Court must finally take into account the extent of the possible repercussions on the work and the reputation of the persons affected by the search (see *Aleksanyan*, cited above, § 214, with further references). In cases where search warrants at issue were formulated in excessively broad terms, lacking any reservation in respect of privileged documents and giving the

prosecution unrestricted discretion in determining which documents to seize, the Court has found that the lawyer's rights under Article 8 of the Convention had been breached on that ground (see *Aleksanyan*, cited above, §§ 216-18; *Smirnov v. Russia*, no. 71362/01, §§ 47-49, 7 June 2007; and *Iliya Stefanov v. Bulgaria*, no. 65755/01, §§ 41-42, 22 May 2008).

70. The Court notes that Mr Intigam Aliyev has lodged a separate application with the Court (application no. 68672/14) concerning, *inter alia*, the alleged breach of his rights under Articles 8 and 18 of the Convention by the prosecuting authorities conducting the search and seizure carried out in his home and office and the allegedly abusive intent behind the authorities' actions leading to his arrest and prosecution. The Court considers that, when deciding the present case, it should avoid prejudging any issues raised in that application, and should therefore leave unaddressed the applicant's argument in the present case that the institution of criminal proceedings against Mr Aliyev was an act of intentional interference with his legal representation of a number of applicants before the Court and part of a crackdown campaign against human-rights lawyers and activists. Instead, the Court will focus on the narrower issue specific to the present case – whether the fact of the seizure of the applicant's case file, as such, amounted to a breach of his rights under Article 34 of the Convention.

71. It appears that the case file in question was the applicant's copy of all the material relating to the application before the Court, including a copy of the original application form with the annexed documents, copies of the Government's and the applicant's observations together with all the relevant annexed documents, all the correspondence between the parties and the Court conducted up until the time of the seizure, information on the case number assigned to the application by the Court, barcode labels provided by the Court to the applicant for the purpose of facilitating the correspondence, and so on. The applicant's case file was in the possession of Mr Aliyev because he was the lawyer representing the applicant before the Court.

72. After the seizure on 9 August 2014, for a period of seventy-six days neither the applicant nor his lawyer had any access to their copy of the case file relating to the application pending before the Court.

73. The Court considers that the principle of effective exercise of the right of individual petition and the principle of the adversarial nature of the proceedings before it require that each party should enjoy unhindered access to copies of all the material relating to the case pending before the Court. Removal from the applicant's possession of his copy of the case file by the authorities of the respondent State, for whatever reason, constitutes an interference with the integrity of the Court proceedings and requires serious justification and compensatory measures for the Court to consider whether such interference is acceptable.

74. The Court notes that the criminal charges brought against Mr Aliyev were formally unrelated to the present application. The prosecution

authorities and the Nasimi District Court were aware or ought to have been aware that Mr Aliyev was representing numerous clients in domestic civil proceedings and before the Court. However, no reservation was put in place in the search warrant with regard to privileged client documents that were kept in his office. In the context of the present complaint, the Court will refrain from drawing a general conclusion as to whether the search warrant issued by the Nasimi District Court on 7 August 2014 was formulated in excessively broad terms. Nevertheless, it notes that the search warrant specified that the documents and other material to be seized were to be related only to the Legal Education Society's establishment, structure, functioning, membership registration and financial activities. Whereas the documents in the applicant's case file did not relate to any of the above, it appears that the prosecution authorities overstepped the scope of the search warrant by seizing the applicant's case file. Moreover, it does not appear that the search was conducted in the presence of an independent observer capable of identifying, independently of the investigation team, which documents were covered by professional privilege. No adequate inventory of the seized privileged documents was made in the search and seizure records of 8 and 9 August 2014.

75. The Court finds that neither the Government nor the domestic authorities or courts have demonstrated any justification for seizing the documents concerning the present application in the context of the criminal proceedings against the applicant's lawyer.

76. Furthermore, no safeguards or compensatory measures were offered to the applicant. Even if there existed some sort of justification for seizing the case file, the Court considers that, at the very least, the applicant should have been informed of the seizure in a timely manner and given an opportunity to make and retain copies of all the material in the case file, to enable him to participate effectively in the Court proceedings after the seizure.

77. Having regard to the above, the Court takes the view that lack of access to the applicant's case file must have had a "chilling effect" on the exercise of the right of individual petition by the applicant and his representative, and that it cannot realistically be argued otherwise. It is true that, before the seizure, the application form and the relevant documents had reached the Court and that both the Government and the applicant had made all the required subsequent submissions enabling the Court to examine the applicant's complaint under Article 3 of Protocol No. 1. However, a failure by the respondent Government to comply with their procedural obligation under Article 34 of the Convention does not necessarily require that the alleged interference should have actually restricted, or had any appreciable impact on, the exercise of the right of individual petition. The Contracting Party's procedural obligation must be enforced irrespective of the eventual outcome of the proceedings and in such a manner as to avoid any actual or

potential chilling effect on the applicants or their representatives (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 209, ECHR 2013).

78. The Court therefore finds immaterial the Government's argument that no correspondence or activity relating to the applicant's case had actually taken place during the period when his case file was in the authorities' possession. The Court considers that, at the time of the seizure, it could not be foreseen by the applicant, or by any other party, for how long his case file would remain in the authorities' possession and whether any correspondence would take place during that period. The very fact that the applicant and his lawyer were deprived of access to their copy of the case file for a lengthy period of time, without any justification and without any compensatory measures, constituted in itself an undue interference with the integrity of the proceedings and a serious hindrance to the effective exercise of the applicant's right of individual petition.

79. In view of the foregoing, the Court considers that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 20,000 new Azerbaijani manats (AZN) in respect of non-pecuniary damage.

82. The Government argued that the claim was unsubstantiated and excessive.

83. Ruling on an equitable basis, the Court awards the applicant 10,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

84. The applicant also claimed AZN 2,500 for legal fees incurred in the proceedings before the Court, AZN 300 for translation costs and AZN 100 for postal expenses.

85. The Government argued that the amounts claimed in respect of legal fees and translation costs were excessive, while the claim in respect of the postal expenses was not supported by relevant documentary evidence.

86. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,600 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

87. 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. *Rejects* the Government's request to strike the application out of the Court's list of cases;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

4. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;

5. *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 new Azerbaijani manats at the rate applicable at the date of settlement:

      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

      (ii) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into his representative's bank account;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	András Sajó
Registrar	President