

Pending cases against Azerbaijan

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number	Meeting Section
5548/03	HAJIYEV	16/11/2006	16/02/2007	1035	4.1
34445/04	MAMMADOV (JALALOGLU)	11/01/2007	11/04/2007	1035, 1043	3.B, 4.2
44363/02	RAMAZANOVA AND OTHERS	01/02/2007	01/05/2007	1043	4.2
31556/03	EFENDIYEVA	25/10/2007	25/10/2007	1035	4.2
33343/03	TARVERDIYEV	26/07/2007	26/10/2007	1035	4.2
19853/03	AKIMOVA	27/09/2007	27/12/2007	1043	4.2
4307/04	NASIBOVA	18/10/2007	18/01/2008	1035, 1043	3.A, 4.2
9852/03	HUMMATOV	29/11/2007	29/02/2008	1035, 1043	3.A, 4.2
4439/04	ISMAYILOV	17/01/2008	17/04/2008	1035	2
24271/05	ABBASOV	17/01/2008	17/04/2008	1035	2

Main pending cases against Azerbaijan

Case name :	HAJIYEV v. Azerbaijan	Appl N° :	<u>5548/03</u>
Judgment of :	16/11/2006		
Final on :	16/02/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.1(16/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	997-2(05/06/2007)		

NOTES OF THE AGENDA

5548/03 Hajiyev, judgment of 16/11/2006, final on 16/02/2007
 The case concerns a violation of the applicant's right of access to court (violation of Article 6§1).
 The applicant was sentenced to 15 year's imprisonment by a Supreme Court judgment which was final and not subject to appeal at the time of his conviction. After the adoption of a new Code of Criminal Procedure in 2000, he was unable to benefit from the appeal procedures which should have applied to his case according to the provisions of the transitional Law, because of the absence of a clear domestic judicial interpretation of this transitional Law.
Individual measures: On 10/05/2004 the applicant was pardoned and released from prison under a presidential pardon. On 21/05/2004, the Plenary Chamber of the Supreme Court upheld the applicant's request for reduction of his sentence. The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage sustained.
 The applicant states in a letter of 16/05/2007 that on 3/03/2007, he appealed against his conviction under Article 386 of the Code of Criminal Procedure.
 • *Information is awaited on the outcome of these proceedings.*
General measures: The European Court's judgment has been translated into Azerbaijani and published in *Qanunçuluq*, the official gazette of the Ministry of Justice (issue No. 3, March 2007) and in the *Azerbaijan Prokurorlugu*, the official gazette of the General Prosecutor's Office (issue No 2, 2007). Moreover the judgment was disseminated among judges and other legal professionals and included in the *curricula* for the training of judges and candidates for the bench.
 The Deputies decided to resume consideration of this item at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on individual measures.

Case name :	TARVERDIYEV v. Azerbaijan	Appl N° :	<u>33343/03</u>
Judgment of :	26/07/2007		
Final on :	26/10/2007		
Violation :		Payment status :	No just satisfaction
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-2(04/03/2008)		
First exam :	1020-2(04/03/2008)		

NOTES OF THE AGENDA

- Case concerning the administration's failure or substantial delay in enforcing a final domestic judgment

33343/03 Tarverdiyev, judgment of 26/07/2007, final on 26/10/2007

The case concerns a breach of the applicant's right to a fair hearing on account of the failure to enforce a judgment (violation of Article 6§1). The applicant was the Forestry Director of the Ismayilli Region until May 2001 when he fell ill and, while in hospital, was dismissed. He brought proceedings against the Ministry of Environment. By a judgment delivered on 20/08/2001, the Narimanov District Court ordered his reinstatement but this judgment was never executed.

The European Court stated that, in omitting to take the necessary measures to enforce the judgment, which had legal force, the authorities had deprived the provisions of Article 6§1 of effect.

Individual measures: The applicant submitted no claim for just satisfaction within the time-limit set by the Court but asked that the judgment of 20/08/2001 be enforced.

The Court recalled that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been in had the requirements of Article 6 not been disregarded. The Court considered that the government should secure, by appropriate means, the enforcement of the domestic judgment at issue. It is for the respondent state to consider whether such means would involve reinstating the applicant in an equivalent job at an equivalent institution or, if this is not possible, granting him reasonable compensation for non-enforcement, or a combination of these and other measures.

- *Information is awaited on the measures envisaged by the Azerbaijani authorities.*

General measures:

- *Translation and publication of the European Court's judgment are awaited, as well as its dissemination to the Ministry of Environment, the Ministry of Justice, the President's office, the Ombudsman and the Constitutional Court. Information is also awaited on measures envisaged by the authorities to avoid repetition of the violation.*

The Deputies decided to resume consideration of this item:

1. at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on individual and general measures.

Latest development

Information regarding individual measures in this case was received on 22 February and 14 April 2008.

Case name :	EFENDIYEVA v. Azerbaijan	Appl N° :	<u>31556/03</u>
Judgment of :	25/10/2007		
Final on :	25/10/2007		
Violation :		Payment status :	
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1028-2(03/06/2008)		
First exam :	1028-2(03/06/2008)		

NOTES OF THE AGENDA

31556/03 Efendiyeva, judgment of 25 October 2007, final on 25 January 2008

The case concerns the delay in the enforcement of a final judgment ordering the applicant's reinstatement in her post as Medical Director of the Republican Maternity Hospital and payment of compensation for wrongful dismissal.

The Court noted that the judgment of the Nasimi District Court of 9/09/1994, which was not enforced until July 2007, had remained unenforced, following the Convention's entry into force in Azerbaijan (15/04/2002), for almost five years and three months and that no reasonable justification had been given for this delay (violation of Article 6§1).

Moreover, the Court held that, by failing to comply with the judgment of the Nasimi District Court of 9/09/1994, the authorities prevented the applicant from receiving the sums due to her, an unjustified interference in her right to peaceful enjoyment of her possessions (violation of Article 1 of Protocol No. 1)

Individual measures: The Court considered that the question of the application of Article 41 (just satisfaction) was not ready for decision.

The applicant was reinstated in her post on 11/07/2007. Some of the violations have therefore been remedied.

- *The issue of other possible individual measures will be examined later in the light of the judgment of the Court on Article 41 of the Convention.*

General measures

- *Translation and publication of the Court's judgment is awaited*
- *Detailed information is awaited on enforcement proceedings currently in force and on effective remedies available to complain and obtain compensation in case of delay in the enforcement of domestic decision of justice.*

The Deputies decided to resume consideration of this item:

1. at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on general measures;
2. once the Court has given judgment under Article 41, for examination of possible individual measures.

Case name :	RAMAZANOVA AND OTHERS v. Azerbaijan	Appl N° :	<u>44363/02</u>
Judgment of :	01/02/2007		
Final on :	01/05/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	1007-2(15/10/2007)		

NOTES OF THE AGENDA

44363/02 Ramazanova and others, judgment of 01/02/2007, final on 01/05/2007

The case concerns a violation of the applicant's right of freedom of association (violation of Article 11) due to the repeated failure of the Ministry of Justice to decide definitively on the applicants' requests for registration of their association (almost four years between the date of the first request and the final registration).

The Court found that there had been no basis in domestic law for such significant delays and did not accept as reasonable the government's excuse that the delays were caused by the alleged heavy workload of the Ministry. The Court considered that it was the duty of a contracting state to organise its own national system of registration and take the measures needed to ensure that the relevant authorities might comply with the time-limits imposed by its own law. Furthermore, as the domestic law in force at the material time did not provide automatic registration in the event that the Ministry failed to take timely action nor specify a limit on the number of times the Ministry could return documents without issuing a final decision, the Court considered that domestic law did not afford the applicants sufficient legal protection against the arbitrary actions of the Ministry.

Individual measures: The association was finally registered on 18/02/2005. The Court awarded the applicants just satisfaction in respect of non-pecuniary damage sustained.

- *Evaluation: no further measure seems necessary.*

General measures: The judgment of the European Court has been translated into Azerbaijani, sent out to judges and other legal professionals, and included in the curricula for the training of judges and candidates for the position of judge. It is expected to be published in the next issue of *Qanunçuluk*, the official gazette of the Ministry of Justice.

- *Confirmation of the publication of the European Court's judgment is awaited.*
- *Information is awaited on the law currently in force and how this law remedies the problems pinpointed by the Court in its judgment.*

The Deputies decided to resume consideration of this item at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on general measures.

Case name :	HUMMATOV v. Azerbaijan	Appl N° :	<u>9852/03</u>
Judgment of :	29/11/2007		
Final on :	29/02/2008		
Violation :		Payment status :	No information
Theme / Domain :			
Next exam :	1035-3.A(16/09/2008); 1043-4.2(02/12/2008)		
Last exam :	1028-2(03/06/2008)		
First exam :	1028-2(03/06/2008)		

NOTES OF THE AGENDA

9852/03 Hummatov, judgment of 29/11/2007, final on 29/02/2008

The case concerns degrading treatment suffered by the applicant due to the lack of appropriate medical treatment of the tuberculosis he had contracted in detention (violation of Article 3). The European Court considered that the inadequate medical treatment in Gobustan Prison must have caused the applicant considerable mental suffering, diminishing his human dignity and amounting to degrading treatment within the meaning of Article 3 of the Convention.

The case also concerns the absence of an effective remedy both in law and in practice, to complain of the lack of adequate medical treatment (violation of Article 13).

Lastly, the case concerns a violation of the right to a public hearing and therefore to a fair trial (violation of Article 6§1).

Individual measures: The European Court awarded just satisfaction to the applicant in respect of non-pecuniary damage. In September 2004 the applicant was given a presidential pardon and was released from prison. He immediately renounced his Azerbaijani citizenship and was taken to the airport and placed aboard a flight to the Netherlands where he is currently living as a stateless person.

• *Information is awaited on measures taken or envisaged in favour of the applicant.*

General measures:

1) Violation of Article 3: The Court recalled that under Article 3 of the Convention the state must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and wellbeing are adequately secured

• *Information is awaited on measures taken or envisaged to eradicate the propagation of diseases in detention, in particular tuberculosis, and to provide appropriate medical care to prisoners.*

2) Violation of Article 13:

• *Information is awaited on the availability of an effective remedy either in law or in practice to complain of the lack of adequate medical treatment in prison.*

3) Violation of Article 6§1: The Court noted that the main reason for reopening the applicant's case was to remedy the alleged lack of a fair hearing at first instance, as the applicant had been recognised as a "political prisoner" upon Azerbaijan's accession to the Council of Europe and Azerbaijan had committed itself to give a "re-trial" to all political prisoners including the applicant. The Court recalled that to hold a trial other than in an ordinary courtroom, in particular in a place like a prison to which the general public in principle has no access, presents a serious obstacle to its public character and that in such case, the state is under an obligation to take compensatory measures to ensure that the public and the media are duly informed of the venue of the hearing and are granted effective access. Finally, the European Court finds that the Court of Appeal failed to adopt adequate compensatory measures to counterbalance the detrimental effect which the holding of the applicant's trial in the closed area of Gobustan Prison had on its public character.

• *Translation and publication of the European Court's judgment are awaited. Information on other measures taken or envisaged by the Azerbaijani authorities is also awaited in order to avoid similar violations.*

The Deputies,

1. took note of the information provided by the Azerbaijani authorities during the meeting which remains to be assessed;
2. invited the Azerbaijani authorities rapidly to inform the Committee of Ministers of further measures taken or envisaged to ensure prisoners' access to appropriate medical care; to guarantee an effective remedy in law and in practice to complain of the lack of adequate medical treatment and to ensure fair trials within the meaning of Article 6 of the Convention;
3. encouraged the intensification of bilateral contacts between the Azerbaijani authorities and the Secretariat in this respect;
4. decided to resume consideration of this item at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on the payment of just satisfaction, if necessary, and at the latest at

their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on individual and general measures.

Latest development

Information on general measures was received on 13 June 2008.

Case name :	AKIMOVA v. Azerbaijan	Appl N° :	<u>19853/03</u>
Judgment of :	27/09/2007		
Final on :	27/12/2007		
Violation :		Payment status :	
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-2(03/06/2008)		
First exam :	1028-2(03/06/2008)		

NOTES OF THE AGENDA

19853/03 Akimova, judgment of 27/09/07 final on 27/12/07
 The case concerns an interference with the applicant's peaceful enjoyment of her possessions on account of a judgment at appeal recognising that the applicant was the lawful tenant of a flat, but postponing the enforcement of an eviction order against illegal occupants the flat, not relying on any domestic legislation, until they may return to their region of origin, Agdam, which remains under the control of Armenian forces (violation of Article 1 of Protocol No. 1).

Individual measures: The European Court considered that the question of the application of Article 41 (just satisfaction) was not ready for decision and should be reserved, the subsequent procedure to be fixed taking account of any agreement which might be concluded between the government and the applicant.

• *Pending the judgment of the Court on the application of Article 41, information is already awaited on measures taken or envisaged to put an end to the interference with the applicant's peaceful enjoyment of her possessions; the issue of restitutio in integrum will be examined in the light of the judgment of the European Court on Article 41.*

General measures:

• *Translation and publication of the European Court's judgment as well as its dissemination to the Supreme Court and to the Court of Appeals are awaited, as is information on other possible measures taken or envisaged.*

The Deputies decided to resume consideration of this item once the Court gives judgment under Article 41 and at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on individual and general measures.

Case name :	MAMMADOV (JALALOGLU) v. Azerbaijan	Appl N° :	<u>34445/04</u>
Judgment of :	11/01/2007		
Final on :	11/04/2007		
Violation :		Payment status :	No information
Theme / Domain :			
Next exam :	1035-3.B(16/09/2008); 1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	997-2(05/06/2007)		

NOTES OF THE AGENDA

34445/04 Mammadov (Jalaloglu), judgment of 11/01/2007, final on 11/04/2007
 The case concerns torture inflicted on the applicant, Secretary General of the Democratic Party of Azerbaijan at the material time, while he was in police custody in October 2003 (violation of Article 3).
 The case also concerns the absence of an effective investigation into the applicant's allegations of ill-treatment (violation of Article 3) in particular in that the authorities failed to secure the forensic evidence in a timely manner and the ensuing criminal investigation was not satisfactory (see § 74 to 79 of the Court's judgment).

Finally, the case concerns the right to an effective remedy (violation of Article 13), because the domestic courts simply endorsed the criminal investigation, without independently assessing the facts of the case.

Individual measures: The Court awarded the applicant just satisfaction in respect of non-pecuniary damage. The Committee's consistent position in this kind of cases is that there is a continuing obligation to conduct investigations where a (procedural) violation of Article 3 is found.

• *Information provided by the Azerbaijani authorities (12/10/2007):* "In accordance with the relevant remedial legislation of the Republic of Azerbaijan and on the basis of the applicant's complaint, the judgment of the European Court of Human Rights was presented to the Supreme Court of the Republic of Azerbaijan to reverse a decision taken on 18 February 2004 by Nasimi District Court and on 17 March 2004 by the Court of appeal of Azerbaijan" (these decisions concern the applicant's complaint regarding the unlawfulness of the Chief Prosecutor's Office's refusal to institute criminal proceedings on his allegations of ill treatment). No further information has been sent to the Secretariat since 12/10/2007.

• *Information is awaited on the fate of the appeal lodged by the applicant before the Supreme Court and on the effective new investigation on the applicant's allegations of ill-treatment. Moreover, detailed information on the "relevant remedial legislation" mentioned in the information transmitted by the Azerbaijani authorities is awaited.*

General measures

• *Information provided by the Azerbaijani authorities (12/10/2007):* "The European Court judgment has been translated and disseminated to police, prosecutors' offices, judicial bodies and courts. Furthermore a range of seminars on the standards of the Convention on Human Rights and the European Committee for the Prevention of Torture as well as on the case law of the European Court were organised for the employees of the above mentioned agencies."

• *Assessment: Detailed information on the means of dissemination of the European Court's judgment and on the beneficiaries of this dissemination is awaited; details on the content, dates and participants at the seminars mentioned in this information is also awaited*

• *Information is also required on general measures taken or envisaged to ensure first respect of the prohibition of torture, inhuman or degrading treatment and secondly proper investigations in case of allegations of ill-treatment. In this respect the Azerbaijani authorities might refer to the experience acquired by member states in executing judgments under the Committee of Ministers' supervision (see Interim Resolutions DH(99)434, ResDH(2002)98 et ResDH(2005)43 concerning Turkey, ResDH(2005)20 concerning the McKerr group of cases against the United Kingdom, etc., as well as in the light of the standards of the Committee for the Prevention of Torture.*

The Deputies,

1. noted with satisfaction that following the judgment of the European Court, an investigation had been opened about the torture inflicted on the applicant;
2. invited the Azerbaijani authorities to keep the Committee of Ministers informed of the development of the investigation in this case and recalled in this respect that to comply with the requirements of the Convention, such an investigation should be effective, conducted with reasonable speed and adequate public scrutiny and capable of leading to the identification and punishment of those responsible;
3. noted with satisfaction that the Court's judgment had been published and widely disseminated and that a broad programme of training for law enforcement staff as well as prosecutors and judges is under way;
4. invited the Azerbaijani authorities rapidly to inform the Committee on any further measures taken, in the light of the relevant recommendations of the CPT to ensure, first respect of the prohibition of torture, inhuman or degrading treatment or punishment and secondly effective investigations in case of allegations of ill-treatment,
5. decided to resume consideration of this case at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on the payment of just satisfaction, if necessary, and at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided on individual and general measures.

Latest development

Information on general measures was received on 12 and 13 June 2008.

Case name :	NASIBOVA v. Azerbaijan	Appl N° :	<u>4307/04</u>
Judgment of :	18/10/2007		
Final on :	18/01/2008		
Violation :		Payment status :	No information
Theme / Domain :			

Next exam : 1035-3.A(16/09/2008); 1043-4.2(02/12/2008)
Last exam : 1028-2(03/06/2008)
First exam : 1028-2(03/06/2008)

NOTES OF THE AGENDA

4307/04 Nasibova, judgment of 18/10/07, final on 18/01/08

The case concerns the violation of the applicant's right of freedom of association (violation of Article 11) due to the repeated failure of the Ministry of Justice to respond within the statutory time-limits to her requests for registration of an association.

Individual measures: The Court awarded the applicant just satisfaction in respect of non-pecuniary damage sustained.

It appears from the judgment of the European Court of Human Rights (§11) that when replying for the last time to the applicant's request for registration, the Ministry of Justice did not take into account the revised charter submitted by the applicant and refused the registration of the Association. It is unclear whether the association was eventually registered or not.

- *Information is awaited on the fate of the applicant's association.*

General measures: see case of Ramzanova and others (Section 4.2)

The Deputies decided to resume consideration of this item at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary, and to join it, subsequently, with the case of Ramzanova and others to supervise individual and general measures.