



FIFTH SECTION

**CASE OF ALIYEVA AND OTHERS v. AZERBAIJAN**

*(Applications nos. 66249/16 and 6 others – see appended list)*

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Supreme Court's failure to follow its own clear line of case-law resulting in applicants' inability to obtain statutory additional compensation for expropriated property

STRASBOURG

21 September 2021

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Aliyeva and Others v. Azerbaijan,**

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

Síofra O’Leary, *President*,  
Mārtiņš Mits,  
Stéphanie Mourou-Vikström,  
Lətif Hüseyinov,  
Jovan Ilievski,  
Lado Chanturia,

Arnfinn Bårdsen, *judges*,  
and Victor Soloveytchik, *Section Registrar*,

Having regard to:

seven applications 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 seven Azerbaijani nationals on various dates (see Appendix);

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints under Article 14 of the Convention and Article 1 of Protocol No. 1 to the Convention;

the parties’ observations;

Having deliberated in private on 31 August 2021,

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

## INTRODUCTION

1. The applications concern the applicants’ complaint about the non-payment of statutory additional compensation for their expropriated properties and raises issues under Article 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

## THE FACTS

2. The applicants’ details are listed in the Appendix. They were all represented by Mr S. Bagirov, a lawyer based in Azerbaijan.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicants were owners of flats situated at Agil Guliyev Street, Elchin and Vusal Hajibabayevler Street and Fathi Khoshginabi Street in the Sabail District of Baku.

I. ORDERS ISSUED IN RESPECT OF THE AREA WHERE THE APPLICANTS' FLATS WERE LOCATED

6. On 22 February 2011 the Head of the Baku City Executive Authority ("the BCEA") issued order no. 92 on "vacating the area around several streets and the buildings at 5 Agil Guliyev Street in the Sabail District and demolishing the residential and non-residential buildings in these areas". The parties did not provide the Court with a copy of this order. It appears from the case file that, pursuant to the order, Z.I., the Deputy Head of the BCEA's Administration, was authorised to sign sale and purchase contracts with the owners of the flats subject to demolition, and that the owners were to be paid 1,500 Azerbaijani manats (AZN) per sq. m.

7. On 31 May 2011 the Head of the BCEA issued order no. 243 "concerning the relocation of residential and non-residential premises in the Sabail District, at 7 and 9 Agil Guliyev Street, 2 Fathi Khoshginabi Street, 9 Aydin Nasirov Street, 3 and 10/12 Elchin and Vusal Hajibabayevler Street, in connection with expansion of the highway" ("the BCEA's order of 31 May 2011"). The order stated that the relocation of residential and non-residential properties was necessary for expanding the highway which connected the central part of the capital with the Bayil settlement as part of the historical Silk Way, establishing new road infrastructure and installing modern engineering communication devices. This had to be ensured by payment of compensation in the amount of AZN 1,500 per sq. m on the basis of sale and purchase contracts certified by a notary, as agreed with the Ministry of Finance and the State Committee on Property Issues. Z.I., the Deputy Head of the BCEA's Administration was authorised to sign the sale and purchase contracts with the owners of the properties.

II. SALE AND PURCHASE OF THE APPLICANTS' FLATS

8. On various dates between 21 July 2011 and 11 February 2012 the applicants concluded sale and purchase contracts with Z.I. on the basis of the orders of 22 February 2011 (the applicant in application no. 77691/16), and 31 May 2011 (the applicants in the other applications).

9. In accordance with the contracts, the applicants sold their flats for various amounts, calculated on the basis of AZN 1,500 per sq. m.

10. The applicants undertook to transfer their ownership rights to the flats and all the relevant documents to the BCEA at the time the contracts were approved by the notary.

### III. COURT PROCEEDINGS

#### **A. The applicants' claims and the position of the defendants**

11. It appears that, before initiating the court proceedings described below, on various dates in 2015 the applicants wrote to the BCEA, arguing that their flats had been expropriated for State needs and asking for the payment of “additional compensation” as provided for by law, consisting of the following: (a) compensation of 20% of the market prices of their properties, to be paid in addition to the purchase price (“the additional 20% compensation”), in accordance with Article 2.3 of Presidential Decree no. 689 of 26 December 2007 (“the 2007 Presidential Decree”, see paragraph 70 below), and (b) further additional compensation “for hardship” of 10% of the “total compensation” paid to them (“compensation for hardship”), in accordance with Article 66 of the Law on the Expropriation of Land for State Needs (“the Law on Expropriation”, see paragraph 69 below).

12. In its replies to the applicants dated 18 March 2015 and 11 August 2015, the BCEA refused to pay any additional compensation.

13. On various dates in 2015 each of the applicants initiated separate sets of proceedings before Baku Administrative Economic Court No. 1 against the BCEA, and the Ministry of Finance as a third party. Relying on Articles 157.9, 246 and 247 of the Civil Code, the applicants argued before the first-instance court that their flats had been expropriated for State needs and that they were therefore entitled to the additional 20% compensation and compensation for hardship. It appears that, while the proceedings were pending before the first-instance court, in support of their latter claims, the applicants in applications nos. 66249/16, 66271/16, 75978/16 and 77691/16 provided a certificate (*arayış*) from the local housing authorities indicating that they had lived in the flats in question for ten or more years. It also appears that the applicants in applications nos. 1038/17 and 52821/17 provided similar references later in the proceedings (after the delivery of the first-instance court judgments and while the proceedings were pending before the appellate court) indicating that they had lived in the flats in question for more than ten and eight years respectively.

14. The BCEA submitted objections to the claims made by the applicants in applications nos. 66249/16, 77691/16 and 1038/17, arguing that the applicants' relocation had been carried out pursuant to its orders, in accordance with the President's instruction and the development programme for implementation of the General Plan of Baku City. It further submitted that the amount of compensation to be paid to the owners of the residential and non-residential properties in the demolition area had been fixed at AZN 1,500 per sq. m and argued that amounts corresponding to the

additional 20% compensation and compensation for hardship had already been included in this overall amount.

15. The Ministry of Finance filed objections in all cases, except with regard to the applicant in application no. 66271/16, asking the court to dismiss the applicants' claims. It firstly argued that, in order for the applicants to be eligible for additional compensation, their properties needed to have been expropriated for State needs, which had not been the case. It also argued that, in accordance with domestic law, a decision by the Cabinet of Ministers was required for expropriation of privately owned property for State needs, and that there had been no such decision in their cases.

16. The Ministry of Finance further argued that the alienation of the applicants' properties had to be regarded as a private civil-law transaction because it had been carried out on the basis of sale and purchase contracts in accordance with the relevant provisions of the Civil Code and the price of the properties had been determined on the basis of "supply and demand". It noted that the BCEA had acted on behalf of the State as a private entity in those transactions and, in support of this argument, relied on Article 43.3 of the Civil Code. It also submitted that the applicants had given their contractual consent to sell their properties for the price offered and that subsequently asking for additional compensation was contrary to the provisions of the civil law on contracts.

## **B. First-instance judgments on the merits**

17. Baku Administrative Economic Court No. 1 delivered separate judgments in each case. Below are summaries of its judgments, grouped according to the similarity of the conclusions and reasoning.

### *1. Applications nos. 66249/16 and 75978/16*

18. By separate judgments delivered on 13 July 2015 Baku Administrative Economic Court No. 1 allowed in full the applicants' claims for additional compensation under both the 2007 Presidential Decree and the Law on Expropriation. It held that it was evident from the circumstances of the cases concerned that the applicants' flats had been expropriated for State needs and that the applicants had resided in the flats in question for more than ten years.

19. The court found that the arguments by the BCEA and the Ministry of Finance were unsubstantiated and noted that, had the flats not been expropriated for State needs as argued, the purchase price would have been negotiated by the applicants themselves and would not have been fixed by an agreement between the BCEA, the Ministry of Finance and the State Committee on Property Issues.

*2. Applications nos. 77309/16, 77691/16 and 52821/17*

20. On 23 September 2015 (application no. 77309/16), 11 November 2015 (application no. 77691/16) and 29 June 2015 (application no. 52821/17) the court allowed the applicants' claims for the additional 20% compensation under the 2007 Presidential Decree, providing reasoning similar to that in the cases concerning the applicants in applications nos. 66249/16 and 75978/16 (see paragraphs 18-19 above).

21. However, it dismissed their claims in respect of compensation for hardship under the Law on Expropriation, finding (i) that the claim was unsubstantiated (application no. 77309/16); (ii) that the claim had not been lodged within one calendar year of the adoption of the BCEA's order of 22 February 2011, as required under Article 66.3 of the Law on Expropriation (application no. 77691/16); and (iii) that the applicant had not been in possession of the flat for the period required under Article 66.4 of the Law on Expropriation to qualify for such compensation (application no. 52821/17).

*3. Applications nos. 66271/16 and 1038/17*

22. On 19 November 2015 (application no. 66271/16) and 11 June 2015 (application no. 1038/17) the court dismissed the applicants' claims in full. It noted that the applicants had voluntarily concluded the sale and purchase contracts and that the BCEA had acted in accordance with the provisions of civil law. It also noted that there had been no decision by the Cabinet of Ministers on expropriation of the applicant's flats and that there had therefore been no expropriation or purchase for State needs.

### **C. Appeals**

23. In the cases concerning the applicants in applications nos. 66249/16, 75978/16, 77309/16, 77691/16 and 52821/17, the BCEA and the Ministry of Finance lodged appeals, essentially reiterating their submissions made to the first-instance court (see paragraphs 14-16 above).

24. The applicants in applications nos. 77309/16, 77691/16 and 52821/17 also lodged appeals and asked the Baku Court of Appeal to allow their claims in the part concerning compensation for hardship under the Law on Expropriation. The applicants in applications nos. 66271/16 and 1038/17 lodged appeals, arguing that it was clear from the BCEA's order of 31 May 2011 that their flats had been expropriated for State needs.

#### **D. Appellate judgments**

25. The Baku Court of Appeal delivered separate judgments in each case. Below are summaries of its judgments some of which are summarised together.

*1. Applications nos. 66249/16, 77309/16 and 77691/16*

26. On 5 February 2016 (applications nos. 66249/16 and 77309/16) and 21 January 2016 (application no. 77691/16) the Baku Court of Appeal quashed the first-instance court judgments in the three cases concerned and dismissed the applicants' claims in full.

27. The court noted, *inter alia*, that the applicants had voluntarily concluded the sale and purchase contracts, the validity of which they had not contested, and which had not contained any provisions on the payment of additional compensation. It further noted that, in the cases concerned, no decision by the Cabinet of Ministers on expropriation had been taken in respect of the properties, and that the properties had not been expropriated for State needs.

28. In the cases concerning the applicants in applications nos. 66249/16 and 77309/16, the court, referring to Articles 66.1 to 66.3 of the Law on Expropriation, also added that, in any event, the period for a claim under that Law had expired, since four years had passed since the applicants had moved from the area in question after the sale of their flats.

*2. Application no. 66271/16*

29. On 26 January 2016 the Baku Court of Appeal upheld the first-instance court's judgment dismissing the applicant's claim, reiterating its reasoning.

*3. Application no. 75978/16*

30. On 27 October 2015 the appellate court quashed the first-instance court's judgment in part, finding that the applicant had failed to lodge her claim for compensation for hardship "within one calendar year", as required under Article 66.3 of the Law on Expropriation (without specifying the date from which the period of one calendar year was to be calculated). It dismissed the remainder of the BCEA's and the Ministry of Finance's appeals and upheld the first-instance court's judgment in the part allowing the claim in respect of the additional 20% compensation.

*4. Application no. 1038/17*

31. On 21 September 2015 the appellate court reversed the lower court's judgment and allowed the applicant's claim in respect of the additional 20%



compensation under the 2007 Presidential Decree, finding that her property had been demolished for construction of a new highway, which was a State need. Referring to Article 157.9 of the Civil Code, the court concluded that the property in question had been expropriated for State needs. It noted that the fact that, in procedural terms, the expropriation decision had been taken by the BCEA (which had no competence under domestic law to initiate expropriation) and not the Cabinet of Ministers (which had such competence) did not affect or change the actual substance of the transaction and the purpose of the purchase of the applicant's property.

32. However, the court dismissed the applicant's claim in respect of compensation for hardship under the Law on Expropriation, finding that she had failed to provide any evidence that she had resided in the flat in question for more than ten years and that she had encountered difficulties in connection with her moving flats.

33. On 21 September 2015 the Supreme Court quashed the above-mentioned judgment based on the appeal by the Ministry of Finance, finding the reasoning in respect of the additional 20% compensation incorrect. It remitted the case to the appellate court for fresh examination.

34. On 25 May 2016 the Baku Court of Appeal, having re-examined the case, dismissed the applicant's appeal, holding that her property had not been expropriated for State needs and noting that no decision had been taken by the Cabinet of Ministers, the competent body, in this regard. It also added that the applicant had made her claim for compensation for hardship belatedly.

*5. Application no. 52821/17*

35. On 30 September 2015 the appellate court upheld the lower court's judgment allowing the applicant's claim in the part relating to the additional 20% compensation and dismissing it in the part relating to compensation for hardship. The court noted that even though the defendant had failed to comply with the expropriation procedure under domestic law (without referring to any specific provisions), this could not be grounds for depriving persons whose property had been expropriated of their rights enshrined in the legislation. As to the other part of the claim, it held that the applicant had not submitted her claim in respect of compensation for hardship to the BCEA until 2015 and had therefore failed to comply with the time-limit prescribed by Article 66.3 of the Law on Expropriation.

36. On 22 December 2016, following an appeal by the Ministry of Finance, the Supreme Court quashed the above-mentioned judgment and remitted it to the appellate court for fresh examination.

37. Having re-examined the appeal, on 28 February 2017 the appellate court dismissed the applicant's appeal, reasoning that there had been no expropriation for State needs and that the purchase of her property had constituted a voluntary contractual transaction. It also reiterated its earlier

conclusion that the applicant's claim for compensation for hardship had been lodged belatedly.

### **E. Cassation appeals**

38. All the applicants lodged cassation appeals, except the applicant in application no. 75978/16, in whose case the appeal was lodged by the opposing party (see paragraph 40 below for details). The applicants maintained that the main purpose of purchasing their property was expansion of the highway, which had economic and strategic importance for the State, and that under Article 157.9 of the Civil Code and Article 3.1.1 of the Law on Expropriation, building roads and other communication lines constituted State needs.

39. In addition, the applicants made reference to several cases in which similar claims by other individuals living in the same area who had concluded similar contracts with the BCEA following its order of 31 May 2011 had been allowed by the Supreme Court in full or in part (see paragraphs 72-87 below).

40. In the case of the applicant in application no. 75978/16, the Ministry of Finance lodged a cassation appeal providing the same arguments as in its appeals before the appellate court in the above-mentioned cases.

### **F. Final decisions of the Supreme Court**

41. On the various dates indicated in the Appendix, the Supreme Court ruled against the applicants, quashing the appellate court's judgment allowing the claim of the applicant in application no. 75978/16 in part, and upholding the lower court's judgments dismissing the claims of the applicants in the other applications. Below are summaries of the Supreme Court's decisions, grouped according to the similarity of the legal reasoning.

#### *1. Cases concerning the applicants in applications nos. 66249/16, 66271/16, 1038/17 and 52821/17*

42. In its decisions concerning these cases, the Supreme Court firstly referred to the relevant sale and purchase contracts between the parties, noting that the validity of the contracts and the purchase price determined had not been contested.

43. The court further noted that in the cases concerned there had been no expropriation for State needs and that the decision on relocation had not been taken by the Cabinet of Ministers. It held that, as agreed with the Ministry of Finance and the State Committee on Property Issues, the owners of the properties had been paid AZN 1,500 per sq. m and no decision had been taken in respect of the payment of any additional compensation. The

Supreme Court therefore concluded that the applicants were not entitled to the additional 20% compensation under the 2007 Presidential Decree.

44. As to the applicants' claim concerning compensation for hardship, the court made a general reference to Articles 66.1 to 66.3 of the Law on Expropriation (see paragraph 69 below), without providing further reasoning. In connection with applications nos. 66249/16 and 52821/17, in addition to its conclusion that the applicants' property had not been expropriated for State needs, it also noted that the applicants had submitted their claims for compensation for hardship belatedly.

2. *Cases concerning the applicants in applications nos. 75978/16, 77309/16 and 77691/16*

45. In its decisions concerning these cases, the Supreme Court also referred to the sale and purchase contracts, noting that the applicants had voluntarily sold their flats to the BCEA at a price agreed by both parties. The court further noted that the contracts had not contained any provisions stating that the flats or the land on which they were situated had been expropriated for State needs or determining the payment of any additional compensation. It therefore concluded that the flats had not been expropriated for State needs.

46. In applications nos. 77309/16 and 77691/16, the Supreme Court also added the following reasoning:

“On the other hand, it appears from the case material that there had been no decision by the relevant executive authority (the Cabinet of Ministers of the Republic of Azerbaijan) on expropriation of the area in question for State needs under the [Law on Expropriation].

Even if this were the case, in accordance with Article 30.1 of the [Law on Expropriation], the expropriating authority may acquire the rights to the land from persons affected by the expropriation ... by negotiation (voluntary sale and purchase).

Under Article 30.2 of this Law, the expropriating authority, as buyer, or the person [affected by the expropriation] ..., as seller, may be the initiators of the voluntary sale and purchase by negotiation.

...

As indicated by the circumstances of the case, the acquisition of the flat in question in accordance with the sale and purchase contract concluded voluntarily between the applicant and the defendant authority by payment of the agreed price was in accordance with the requirements of Articles 646.1 and 648.1 of the Civil Code and Articles 30 and 52.7 of the [Law on Expropriation].”

47. In all cases, the Supreme Court failed to address the applicants' submissions concerning previous judgments in which similar compensation claims had been allowed (see paragraphs 72-87 below for a summary of these judgments).

## RELEVANT LEGAL FRAMEWORK

### I. RELEVANT DOMESTIC LAW AND PRACTICE

#### A. The 1995 Constitution

48. Article 13 § I of the Constitution provides:

“Property in the Republic of Azerbaijan is inviolable and is protected by the State.”

49. Article 29 § IV of the Constitution provides:

“No one shall be deprived of his or her property without a court decision. Total confiscation of property is not permitted. Expropriation of property for State needs may be permitted only subject to prior and fair compensation corresponding to its value.”

50. The legislative system of the Republic of Azerbaijan is comprised, in order of hierarchy, of the Constitution, acts passed by referendum, laws enacted by Parliament, presidential decrees, decisions of the Cabinet of Ministers and normative acts of the central executive authorities (Articles 148 § I and 149). International treaties to which the Republic of Azerbaijan is a party constitute an integral part of its legislative system (Article 148 § II).

51. The President of the Republic of Azerbaijan issues decrees when establishing general rules and presidential orders in respect of other matters (Article 113 § I). Presidential decrees cannot contradict the Constitution and laws. The application and execution of decrees, only if published, are obligatory for all citizens, executive authorities and legal entities (Article 149 § IV).

#### B. The 2000 Civil Code

52. Article 43.3 of the Code provides that the Republic of Azerbaijan participates in civil-law relationships in the same way as other legal entities. In such cases, the powers of the Republic of Azerbaijan are exercised by its bodies which are not legal entities.

53. Article 157.9 of the Civil Code, as in force at the material time, provided:

“Private property may be expropriated by the State, when required for State or public needs, only in the cases permitted by law, for the purposes of building roads or other means of communication, delimiting the State border strip or constructing defence facilities, by decision of the relevant State authority [the Cabinet of Ministers], and subject to prior payment of compensation in an amount corresponding to its market value.”

54. Article 246 of the Code, as in force at the material time, provided:

“246.1. A decision to expropriate land for State needs shall be taken by the relevant executive authority [the Cabinet of Ministers] ... in accordance with Article 157.9 of this Code.

...

246.5. The provisions of Articles 246 to 249 of this Code shall, along with the land expropriated for State needs, also apply to buildings (houses, constructions, devices) located or nor located on that land and expropriated for the same purpose.”

55. Presidential Decree no. 386 of 25 August 2000, which deals with various aspects of implementation of the 2000 Civil Code, as amended by Presidential Decree no. 78 of 17 June 2004 and as in force at the material time, designated the Cabinet of Ministers as “the relevant executive authority” referred to in Articles 157.9 and 246.1 of the Civil Code.

56. Article 247 of the Code, as in force at the material time, provided:

“247.1. The purchase price of land expropriated for State needs shall be calculated in the manner determined by the relevant executive authority and paid to the owner no earlier than [eighty] calendar days and no later than [one hundred and twenty] calendar days from the date he or she receives notification under Article 246.3.

247.2. The purchase price shall include the market price of the land and the immovable property on it, as well as all damage incurred by the owner resulting from the expropriation of his or her land, including loss of profit and damage caused by early termination of his or her obligations to third parties...”

57. Articles 646.1 and 648.1 are part of sub-chapter 5 (Purchase and sale of immovable items) of chapter 29 (Purchase and sale) of section 7 (Obligations arising out of contracts) of the Code.

58. Article 646.1 of the Code provides that under the sale and purchase contract, the seller undertakes to transfer the land, house, building, construction, flat or other immovable property to the buyer.

59. Article 648.1 of the Code provides that when selling and purchasing immovable property, each party complies with his or her obligation to offer or accept by taking all the necessary steps to register the transfer of ownership rights in the State register of immovable property.

### **C. Law on the Expropriation of Land for State Needs of 20 April 2010 (“the Law on Expropriation”)**

60. The Law on Expropriation provides for complex and detailed procedures and a number of substantive and procedural requirements in respect of expropriation of immovable property. Below is a summary of the expropriation procedure established by the Law and the text of the relevant provisions.

61. Article 1.1.1 of the Law defines expropriation (*alınma*) as follows:

“Expropriation – voluntary or compulsory purchase by the State of land (or part thereof) in private or municipal ownership by termination of the rights of ownership, use and lease, including encumbrances (restrictions) on the use of the land, as well as

the repossession of used and/or leased State land from the user or lessee by payment of appropriate compensation.”

62. Under Article 1.1.2, the definition of “land” also includes immovable property located on it (constructions, buildings and similar objects connected to the land).

63. Article 3.1 of the Law provides:

“The State needs for which expropriation [may take place] under this Law are as follows:

3.1.1. building and installing roads of State importance and other communication lines (main oil and gas pipelines, sewers, high-voltage electricity lines, hydraulic structures); ...”

64. Land expropriated for State needs may be expropriated on the basis of an agreement with the owner (“voluntary sale and purchase”) or, if no agreement can be reached, in a compulsory manner by court order subject to payment of compensation (“compulsory expropriation”) (Article 4.1).

65. The Law and Presidential Decree no. 382 of 15 February 2011 on its implementation designate the following State authorities and other bodies as having various roles and powers in the expropriation process: (a) the Cabinet of Ministers as the body which, *inter alia*, determines the existence of a State need, appoints an “expropriating authority”, and issues an expropriation order (Articles 9 and 19 and other provisions); (b) the “expropriating authority” appointed by the Cabinet of Ministers, which is responsible for executing the expropriation and has a wide range of competences and obligations (Article 6 and other provisions); (c) the Ministry of Finance as the supervisory authority, which monitors compliance of the expropriating authority and other bodies with the requirements of domestic law, examines various complaints, and presents proposals and reports on various aspects of the expropriation to the Cabinet of Ministers (Article 8 and other provisions); (d) an “expropriation group” established by the expropriating authority and including representatives of various State authorities, which holds meetings with the persons affected by the expropriation on various issues (Article 22 and other provisions); (e) a valuation commission established by the Cabinet of Ministers (Article 19 and other provisions); (f) a relocation commission set up by the expropriating authority, which participates in drawing up and implementing a relocation plan and takes the necessary steps to defend the interests of the persons affected by the expropriation (Article 40 and other provisions); (g) other bodies such as independent appraisers working with the valuation commission (Articles 23-24 and other provisions); and (h) the domestic courts which, *inter alia*, finalise the “compulsory” expropriation by approving the acquisition by the State of possession of the property (Article 52 and other provisions).

66. The default “compulsory expropriation” procedure consists of a number of steps taken by the Cabinet of Ministers, the “expropriating authority” and other authorities mentioned above, which include, *inter alia*, valuation of the property, determination of compensation and assistance in relocation, if necessary (Chapters II, III and V). The expropriation is completed after the acquisition of property is approved by the court upon application of the expropriating authority. If the parties have no objections to the terms of expropriation and compensation, the court approves the acquisition without examining the terms; otherwise, it reviews the relevant documents and complaints (Article 52). The applicant and the expropriating authority are free to use alternative dispute resolution to resolve their disputes (Article 52.7).

67. As noted above, the Law allows for the option of “voluntary sale and purchase”, which can be initiated by either party (Article 30). The purchase price determined in the context of the “voluntary sale and purchase” is the same in type and substance as the compensation determined in accordance with Chapter VII of the Law (see paragraph 68 below), however, that amount is increased by 10% in order to encourage the person affected to sell voluntarily (Article 32.3). Once an offer containing, *inter alia*, the proposed price is made (Article 33), the person affected can make a counter-offer, which may be accepted by the expropriating authority subject to obtaining the Ministry of Finance’s consent (Article 34). The purchase of the land is formalised by the conclusion of a sale and purchase contract between the person affected by the expropriation and the expropriating authority acting on behalf of the State (Article 35). Within ninety calendar days, the expropriating authority pays the full price to the owner, bears the costs of transferring ownership to the State and assists the owner in vacating the property and relocating to his or her new place of residence (Article 36).

68. Chapter VII of the Law on Expropriation concerns compensation. All persons affected by expropriation must be paid fair compensation in accordance with the provisions of the Law. Compensation is calculated by determining either the market price of the land or the recovery price, where the determination of the former is impossible (Articles 55 and 58). Compensation can be paid in different forms, including the allocation of land comparable to the expropriated land in terms of size, quality and production capacity comparable to the expropriated one or a lump sum payment (Article 65).

69. Article 66 of the Law provides:

“66.1. In all cases of expropriation of residential property in accordance with this Law, the expropriating authority shall pay to the claimant compensation for hardship in addition to the payments to which persons affected by the expropriation are entitled.

66.2. Compensation for hardship shall be paid to the person affected by the expropriation on presentation of a document confirming that he or she has lived in the expropriated property as [his or her] main place of residence for at least five years.

66.3. The person affected by the expropriation shall submit his or her claim for compensation for hardship to the expropriating authority within one calendar year of the occurrence of the event provided for in Article 66.2 of this Law.

66.4. Compensation for hardship shall be determined [as a] percentage of the total compensation to be paid to the claimant, depending on the period that the person affected by the expropriation has lived in the residential property:

66.4.1. for a period of 5 to 6 years – 5%;

66.4.2. for a period of 6 to 7 years – 6%;

66.4.3. for a period of 7 to 8 years – 7%;

66.4.4. for a period of 8 to 9 years – 8%;

66.4.5. for a period of 9 to 10 years – 9%;

66.4.6. for a period of more than 10 years – 10%.”

#### **D. Presidential Decree no. 689 of 26 December 2007**

70. Article 2.3 of the Decree provides:

“... the owner of the immovable property which is expropriated for State needs shall be paid, in addition to the purchase price, the amount of 20[%] of the market price of that immovable property calculated in accordance with the legislation (*...dövlət ehtiyacları üçün alınan daşınmaz əmlakın mülkiyyətçisinə həmin daşınmaz əmlakın qanunvericiliyə uyğun olaraq hesablanmış bazar qiymətinin 20 faizi miqdarında satınalma qiymətinə əlavə haqq ödənilir.*)”

71. Under Article 3 of the Decree, the Presidential Administration was instructed to prepare and present to the President the draft Law on Expropriation within two months.

#### **E. Case-law of the Supreme Court**

1. *Cases brought by other individuals affected by the BCEA's order of 31 May 2011*

72. As mentioned above (see paragraph 39 above), in several cases the Supreme Court upheld the lower courts' judgments allowing in full or in part similar claims lodged by other individuals living in the same area as the applicants who had been affected by the same order of the BCEA.

73. It appears from those decisions that during the proceedings before the domestic courts, the BCEA and the Ministry of Finance presented arguments similar to those made in the applicants' cases.



**(a) Judgment in case no. 2-1(102)-739/15**

74. On 14 October 2015 the Supreme Court dismissed the BCEA's cassation appeal and upheld the appellate court's judgment awarding A.B. the additional 20% compensation and dismissing her claim for compensation for hardship.

75. It firstly noted that the BCEA's order of 31 May 2011 had been adopted for expanding the highway which connected the central part of the capital with the Bayil settlement as part of the Silk Way and served as an entry-exit point to the south of the country, establishing new road infrastructure and installing modern engineering communication devices. The court concluded that this showed that A.B.'s property had been expropriated for State needs and that she should therefore be awarded the additional 20% compensation in accordance with the 2007 Presidential Decree.

76. The court also added that since compensation had already been awarded in previous similar cases, A.B.'s claim should be allowed.

**(b) Judgment in case no. 2-1(102)-99/2016**

77. On 7 January 2016 the Supreme Court dismissed the Ministry of Finance's cassation appeal and upheld the appellate court's judgment awarding L.K. the additional 20% compensation and dismissing his claim for compensation for hardship. The court held that L.K. was entitled to the additional 20% compensation under the 2007 Presidential Decree and that the fact that the decision on expropriation had not been taken by the competent authority did not exclude his right to claim this compensation. As regards the claim for compensation for hardship, it referred to Articles 66.1-66.3 of the Law on Expropriation without providing any specific reasoning.

**(c) Judgment in case no. 2-1(102)-102/2016**

78. On 13 January 2016 the Supreme Court dismissed the BCEA's and the Ministry of Finance's cassation appeals and upheld the appellate court's judgment awarding P.A. the additional 20% compensation and dismissing her claim for compensation for hardship.

79. The court noted that because the aim of the relocation was to expand the highway, establish new road infrastructure and install modern engineering communication devices, P.A.'s flat had been demolished for State needs.

80. It held that the absence of an expropriation order by the Cabinet of Ministers did not change the fact that the property in question had been expropriated for State needs, and that the fact that there had been no decision only affected the issue of the lawfulness of the expropriation.

81. Lastly, addressing the Ministry of Finance's argument about the existence of a sale and purchase contract between the parties, the court noted that although the BCEA had already issued an expropriation order and demolition of her property, demolition work had started and the purchase price for expropriation had been determined, P.A. had been faced with a situation where she had had no other choice but to agree to sign the contract and had therefore not sold her flat voluntarily.

**(d) Judgment in case no. 2-1(102)-201/16**

82. On 19 January 2016 the Supreme Court dismissed the BCEA's and the Ministry of Finance's cassation appeals and upheld the appellate court's judgment awarding Z.A. the additional 20% compensation and compensation for hardship.

83. The court held that the Ministry of Finance's reliance on the general civil-law provisions on contracts was incorrect because Z.A. had not decided to sell her flat voluntarily, but had done so because of the BCEA's order. In other words, as she had been in an unequal situation in public-law relations with a State body, Z.A. had had no choice to act otherwise.

84. The court also noted that the State authority's failure to comply with the requirements of the Law on Expropriation did not deprive the person affected by expropriation of the right to rely on the provisions of that law for defending his or her property rights. As to the absence of any provision on the obligation to pay additional compensation in the contract, the court noted that the obligation to pay that compensation did not arise from a contract, but from the law.

85. Lastly, in reply to the Ministry of Finance's argument that Z.A. had submitted her claim for compensation for hardship to the BCEA four years after the alienation of her property and had therefore missed the time-limit under Article 66.3 of the Law on Expropriation, the court noted that the BCEA had itself had to apply this time-limit when responding to Z.A.'s letter asking for the above compensation before initiating the court proceedings. It added that, following the BCEA's refusal, Z.A. had applied to the court within the prescribed time-limit.

**(e) Judgment in case no. 2-1(102)-198/2017**

86. On 24 January 2017 the Supreme Court dismissed the BCEA's and the Ministry of Finance's cassation appeals and upheld the appellate court's judgment awarding R.J. the additional 20% compensation and compensation for hardship.

87. The court noted that it was not disputed that funds had been allocated by the State to the BCEA to carry out the demolition work pursuant to the BCEA's order of 31 May 2011. Referring to the relevant provisions of the 2007 Presidential Decree and the Law on Expropriation

and taking into account the fact that R.J. had lived in the expropriated flat for more than ten years before the expropriation, the Supreme Court concluded that the appellate court's decision awarding her the additional compensation had been justified.

2. *Cases brought by individuals affected by the BCEA's other orders*

88. In a series of decisions (for example, in cases nos. 2-2(102)-948/13 of 18 September 2013, 2-2(102)-1204/13 of 21 November 2013, 2-2(102)-43/14 of 9 January 2014, 2-1(102)-543/14 of 30 April 2014, 2-1(102)-1130/14 of 10 October 2014, 2-1(102)-1399/2014 of 4 December 2014, 2-1(102)-649/2015 of 23 July 2015, 2-1(102)-1011/15 of 5 August 2015, 2-1(102)-1203/15, and 2-1(102)-1233/2015 of 19 November 2015) which concerned the claims for additional 20% compensation, and in some cases, also compensation for hardship by some individuals affected by other orders of the BCEA, the Supreme Court allowed the claims for additional 20% compensation or upheld the lower courts' judgments allowing those claims, finding that their properties had been expropriated for State needs. As to compensation for hardship, the domestic courts allowed the claim in one case noting that the complainant had lived in her flat for more than ten years before its demolition. In the other cases, the courts found that the complainants had failed to provide proof of their claims and dismissed them as unsubstantiated.

II. RELEVANT INTERNATIONAL INSTRUMENTS AND REPORTS

89. The relevant reports of the UN Committee on Economic, Social and Cultural Rights and of the Council of Europe Committee on the Honouring of Obligations and Commitments by Member States are summarised and cited in *Khalikova v. Azerbaijan* (no. 42883/11, §§ 90-91, 22 October 2015).

90. In February 2012 Human Rights Watch issued a detailed report concerning the ongoing forced evictions and expropriations in Baku, entitled "They took everything from me – Forced Evictions, Unlawful Expropriations, and House Demolitions in Azerbaijan's Capital". The report was based on Human Rights Watch researchers' visits to Baku in June, September and December 2011 and in January 2012 during which sixty-seven interviews were carried out with property owners, lawyers and NGO representatives. The relevant extract of the report reads:

"Since 2008, the government of Azerbaijan has undertaken a sweeping program of urban renewal in Baku ... In the course of this program, the authorities have illegally expropriated hundreds of properties, primarily apartments and homes in middle-class neighbourhoods, to be demolished to make way for parks, roads, a shopping [centre], and luxury residential buildings. The government has forcibly evicted homeowners, often without warning or in the middle of the night, and at times in clear disregard for

residents' health and safety, in order to demolish their homes. It has refused to provide homeowners fair compensation based on the market values of properties, many of which are in highly-desirable locations and neighbourhoods.

...

The Baku City Executive Authority and the Azerbaijan State Committee on Property oversee the expropriations and forced evictions documented in this report. Once the authorities have identified a property for expropriation and demolition, the government typically offers monetary compensation or resettlement to the residents. However, not all homeowners receive compensation or resettlement offers or accept the government's offers. They therefore remain in their homes. When the authorities arrive to demolish the homes, they forcibly evict the remaining homeowners and their families.

...

When governments expropriate private property for [S]tate needs, they must provide a fair and transparent process for compensation that reflects market value of the property as well as compensation for relocation and other expenses. However, the Azerbaijani authorities have offered some homeowners, typically those with homes smaller than 60 square [metres], monetary compensation at a single, government-fixed rate of 1,500 manat[s] (US\$1,900) per square [metre], without regard to the property's location, age, condition, use, or any other factors. Homeowners were not aware of any independent appraisals of their homes ordered by the government, and the government has not responded to several inquiries by Human Rights Watch as to whether it conducted independent appraisals of homes..."

91. The report's chapter entitled "Forced Sale at an Arbitrary Price" contained the following:

"Homeowners from the neighbourhood behind the Heydar Aliyev Hall and the Bayil neighbourhood near the National Flag Square described the government's compensation process to Human Rights Watch. For apartments and houses smaller than 60 square [metres], the government's compensation mechanism requires homeowners to enter into a real estate transaction with a private individual at a fixed price, set by the government, in order to receive monetary compensation for their homes. This mechanism amounts to a forced sale by property owners since, by order of the Baku City Executive Authority, property owners do not have the opportunity to sell their properties by any other means.

According to a February 2011 letter issued by the State Committee on Property [Issues], the compensation rate is 1,500 manat[s] (US\$1,900) per square [metre], irrespective of the property's location, age, condition, quality of renovation, or any other factors. The authorities have not publici[s]ed or explained how this rate was determined and by whom, or how the same rate was established for homes expropriated prior to the Committee's February 2011 letter. In no cases known to Human Rights Watch has the government conducted appraisals to determine the market value of properties, nor does it consider in its awarding of compensation any independent appraisals ordered by homeowners.

...

A similar compensation system exists for homes expropriated and demolished next to the National Flag Square in the Bayil neighbo[u]rhood where, in order to receive monetary compensation, owners of apartments smaller than 60 square [metres] are

also required to conclude real estate transactions with a private individual at the fixed rate of 1,500 manat[s] (US\$1,900) per square [metre].”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

92. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

93. The applicants complained that there had been an unlawful interference with their right to property owing to the domestic courts’ failure to award them the additional increases in compensation to which they had been entitled under domestic law. They relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

#### **A. Scope of the complaint raised by the applicant in application no. 52821/17**

94. In her observations submitted to the Court after notice of the application had been given to the Government, the applicant in the above application also referred to the additional 10% increase in compensation as “encouragement for voluntary sale” as provided for under Article 32.3 of the Law on Expropriation (see paragraph 67 above).

95. In her complaints before the domestic courts and initial application to the Court, the applicant only complained about the domestic authorities’ failure to award her compensation for hardship under Article 66 of the Law on Expropriation and the additional 20% compensation under the 2007 Presidential Decree, and never made any claims or complaints in connection with the increase in compensation provided for by Article 32.3 of the Law on Expropriation.

96. Having regard to the fact that this issue was not part of the complaint of which the Government were given notice on 7 November 2018, the Court will limit its consideration to the applicant’s initial complaint under

Article 1 of Protocol No. 1, namely the complaint regarding the domestic authorities' failure to pay her the additional 20% compensation under the 2007 Presidential Decree and compensation for hardship under Article 66 of the Law on Expropriation (compare, for example, *Khizanishvili and Kandelaki v. Georgia*, no. 25601/12, § 42, 17 December 2019).

## **B. Admissibility**

### *1. Applicability of Article 1 of Protocol No. 1*

#### **(a) The parties' submissions**

##### *(i) The Government*

97. With respect to applications nos. 66249/16, 66271/16, 75978/16, 77309/16, 77691/16 and 1038/17, the Government, referring to the domestic courts' conclusions, submitted that the applicants had sold their flats to the BCEA for the price agreed between the parties and had failed to prove that their flats had been expropriated for State needs. They had not therefore been entitled to any expropriation-related compensation.

98. With respect to application no. 52821/17, the Government submitted that an expropriation order by the Cabinet of Ministers had been required for expropriation of the property for State needs and that, since no such decision had been taken, the alienation of the property had to be regarded as a "purchase" rather than "expropriation". They added that the BCEA had acted as "an independent party" rather than a State entity when signing the contract. The Government also noted that the calculation had been based on the market price and not on a fixed price. With regard to compensation for hardship under Article 66 of the Law on Expropriation, they submitted that the applicant's property rights had been registered on 18 January 2012 (just before the sale of her flat) and that she had therefore failed to meet the minimum residence requirement under that provision.

##### *(ii) The applicants*

99. The applicants argued that their flats had been expropriated for State needs and that they had therefore been eligible to receive additional compensation under domestic law.

100. They also claimed that they had agreed to sell their flats to the State with the expectation that they would benefit from the additional guarantees provided for in the domestic legislation, that is, the additional 20% compensation and compensation for hardship. According to them, the State authorities had informed them that the payment of additional compensation would only be possible after the conclusion of the sale and purchase contract and that, considering this promise, they had agreed to sign the relevant contracts.

101. The applicants further argued that the authorities had essentially obliged them to sign the sale and purchase contracts and that they had agreed to sign them owing to their difficult financial situation and the insistence of the BCEA.

**(b) The Court's assessment**

*(i) General principles*

102. The Court reiterates that, according to its case-law, an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or claims that are sufficiently established to be regarded as "assets".

103. In certain circumstances, a "legitimate expectation" of obtaining an "asset" may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX; *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I; and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 142, 20 March 2018).

104. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see, *inter alia*, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII, and *Kopecký*, cited above, § 35).

*(ii) Application of these principles to the present cases*

105. The Court notes that the applicants' complaint concerns two different monetary claims: a claim for the additional 20% compensation on the basis of the 2007 Presidential Decree and a claim for compensation for hardship under Article 66 of the Law on Expropriation. The Court will determine the applicability of Article 1 of Protocol No. 1 to each of these claims separately.

*(α) Additional 20% compensation under the 2007 Presidential Decree*

106. Article 2.3 of the 2007 Presidential Decree entitled a person whose property had been expropriated for State needs to additional compensation. This compensation appeared to be essentially a fixed premium calculated at the rate of 20% of the market price of the expropriated property. It appears

from the text of the 2007 Presidential Decree that the only requirement for entitlement to the compensation was that the property had to be expropriated for State needs. No other conditions (such as time-limits and specific procedural requirements) were laid down therein. Nor does it follow from the text of the Decree that entitlement to this compensation was conditional on the expropriation being conducted in accordance with the procedures established by the Law on Expropriation (which had not yet been enacted at the time the Decree entered into force) or any other legislative act.

107. In the present cases, the applicants' flats were transferred into State ownership in 2011 and early 2012 pursuant to the sale and purchase contracts they concluded with Z.I., who acted on the authority given to him to do so by the BCEA. The sale and purchase were initiated pursuant to the BCEA's orders of 22 February and 31 May 2011 concerning the relocation of residential and non-residential properties in the relevant area. The applicants argued that these transactions had, in fact, constituted expropriation of their properties for State needs and that they had therefore been entitled to the additional 20% compensation under the 2007 Presidential Decree. The Government, on the other hand, argued that the Decree had been inapplicable to their situation because the transactions had constituted voluntary civil-law transactions where the person delegated by the BCEA had acted as a private party.

108. The Court observes that while the applicants' claims for additional compensation were refused by final decisions of the Supreme Court on the basis of the conclusion that their properties were not expropriated for State needs, in a number of other cases, the Supreme Court upheld the lower courts' judgments allowing additional compensation claims lodged by other individuals living in the same neighbourhood as the applicants who had been similarly affected by the BCEA's order of 31 May 2011 and had claimed the same compensation relying on the same grounds. In those latter cases, the Supreme Court concluded that, despite the authorities' failure to follow the relevant expropriation procedure and, in particular, the absence of an expropriation order by the Cabinet of Ministers, the property in question had indeed been expropriated for State needs. Moreover, in its decision of 14 October 2015 the Supreme Court also referred to the existence of previous similar cases in which compensation claims had been allowed (see paragraph 76 above). It has not been argued by the Government that such an approach, which appears to recognise the existence of a legitimate expectation for the applicants to obtain the 20% compensation they claimed, was the result of an isolated judicial error or that it was for some reason irrelevant to the applicants' cases. While similar relevant cases appear to have been decided by the domestic courts differently, the applicants' claim to additional 20% compensation was supported by a clearly identifiable line of Supreme Court case-law.



109. The Court further notes that in the cases of *Akhverdiyev* (no. 76254/11, 29 January 2015) and *Khalikova* (cited above) the applicants' house and flat respectively were demolished following similar orders issued by the BCEA, which were based on the General Plan of Baku City. In the case of *Akhverdiyev*, the applicant was offered, as compensation, vouchers to two State-owned flats, while in *Khalikova* the applicant was offered AZN 1,500 per sq. m of her flat. In both cases, the applicants refused to accept the BCEA's offers and vacate their properties. Both applicants challenged the lawfulness of the BCEA's actions before the domestic courts, albeit unsuccessfully, and their properties were demolished. In the case of *Khalikova*, the applicant subsequently concluded a sale and purchase contract with the representative of the BCEA, more than two months after the demolition of her flat (see *Khalikova*, cited above, § 65). The Court found that, in both cases, the deprivation of the applicants' properties had not been carried out in compliance with the conditions provided for by the applicable domestic law, and more specifically the applicable legislation on expropriation. In particular, it was not demonstrated that, under domestic law, the BCEA had competence to expropriate privately owned property (see *Akhverdiyev*, § 92, and *Khalikova*, § 138, both cited above). In the present cases, unlike those mentioned above, the applicants did not challenge the lawfulness of the BCEA's actions before the domestic courts and their complaints do not concern the expropriation as such. However, what is relevant to the complaint in the present cases is that, particularly in the *Akhverdiyev* case, the Government expressly argued before the Court that the applicants' properties had been lawfully "expropriated ... for public needs" by the BCEA (see *Akhverdiyev*, cited above, § 63). Having regard to the fact that the circumstances in which the alienation of privately owned properties occurred in those cases and in the present cases were to a large extent similar (that is, the alienation and deprivation of title were initiated pursuant to orders by the BCEA and in *Khalikova* a sale and purchase contract was eventually signed), the Court observes that the Government's position on the question whether the alienation could be characterised under domestic law as expropriation for State or public needs was inconsistent.

110. In view of the above, the Court also notes that the refusal to award compensation to the applicants was not due to any long-standing divergence of domestic case-law resulting from varying interpretations by the domestic courts of the legal provision concerning the payment of the additional 20% compensation under the 2007 Presidential Decree, as it has not been demonstrated that there were any conflicting interpretations of that provision (contrast, for example, *Albu and Others v. Romania*, nos. 34796/09 and 63 others, §§ 35 et seq. and 47, 10 May 2012). The refusal stemmed from the domestic courts', and notably the Supreme Court's conclusions in these particular cases, departing from its findings in

previous similar cases, that the Decree was inapplicable in the applicants' situation because that situation did not amount to expropriation for State needs (see paragraph 108 above).

111. Having regard to above considerations, the Court concludes, for the purposes of the present complaint, that the applicants' position that their flats had, in fact, been expropriated for State needs by the BCEA, acting on behalf of the State, and that therefore they were entitled to the additional 20% compensation was based on a clear line of Supreme Court case-law and, despite the existing contradictions in the domestic courts' approach, amounted to a "legitimate expectation" which was sufficiently established in domestic law and a sufficient body of domestic case-law to give rise to the notion of "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention (compare *Brezovec v. Croatia*, no. 13488/07, §§ 42-43 and 45, 29 March 2011).

112. It follows that Article 1 of Protocol No. 1 is applicable in respect of the applicants' claim concerning the additional 20% compensation under the 2007 Presidential Decree.

(β) Compensation for hardship under the Law on Expropriation

113. The Court reiterates that a conditional claim which lapses as a result of the non-fulfilment of the condition cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1 (see paragraph 104 above).

114. It appears that, under Article 66 of the Law on Expropriation, persons wishing to obtain compensation for hardship had to satisfy the following conditions: (i) submission of a document confirming that they had lived in the expropriated property as a main place of residence for at least five years (Article 66.2), (ii) claims for this compensation had to be submitted to the expropriating authority, and (iii) such claims had to be submitted within one calendar year of the occurrence of the event provided for in Article 66.2 of the Law (Article 66.3). Depending on the length of the residence period, the amount of compensation varied between 5 and 10% (see paragraph 69 above). Accordingly, unlike the 2007 Presidential Decree, which provided for the right to receive additional compensation without a time restriction or any other conditions for claiming it, Article 66 of the Law on Expropriation provided for a time restriction in the form of a claim period and specified the authority ("the expropriating authority") to which such a claim was to be submitted.

115. The Court notes that, under Articles 6 and 9 of the Law on Expropriation, the "expropriating authority" was an authority appointed by the Cabinet of Ministers in its expropriation order (see paragraph 65 above). As already noted, no such order was issued in the present cases and the applicants eventually submitted their claims to the BCEA, which, as noted

above, had no competence to expropriate private property of its own motion.

116. Nevertheless, even accepting that the applicants might have satisfied the first condition requiring them to prove the minimum length of residence of, depending on the applicant, eight or ten years and more (see paragraph 13 above) and that they submitted their claim to the relevant authority, there are other elements which make it difficult to accept that the applicants had a “legitimate expectation”.

117. In particular, the applicants relinquished title to their properties on various dates between 21 July 2011 and 11 February 2012. At that time, none of the applicants initiated any court proceedings challenging the lawfulness of the expropriation procedure owing to the authorities’ failure to comply with the requirements of the Law on Expropriation. Thereafter, three to four years after the loss of title to their flats, the applicants brought claims against the BCEA under Article 66 of the Law on Expropriation. However, by that time, even if the expropriation had been carried out in accordance with that Law, any period for claiming compensation under it would have long expired.

118. Lastly, while it is possible to conclude from the material before the Court that there existed a sufficient body of domestic case-law which, together with the applicable domestic legal provisions, constituted a sufficient basis for the applicants’ claims in respect of the additional 20% compensation under the 2007 Presidential Decree, the same cannot be said in respect of their claims for compensation for hardship under Article 66 of the Law on Expropriation. In fact, in only three cases brought by other individuals affected by the BCEA’s orders similar claims were eventually allowed (see paragraphs 82, 86 and 88 above).

119. In sum, the Court considers that the applicants have failed to demonstrate convincingly that at the time of lodging their claims they could have had a “legitimate expectation” of obtaining compensation for hardship under Article 66 of the Law on Expropriation. Accordingly, with respect to that claim, the applicants cannot be regarded as having had a “possession” within the meaning of Article 1 of Protocol No. 1.

120. It follows that Article 1 of Protocol No. 1 is not applicable to this part of the complaint.

## 2. *Conclusion as regards admissibility*

121. The Court reiterates its finding that Article 1 of Protocol No. 1 is inapplicable to the part of the complaint concerning the applicants’ claims in respect of compensation for hardship under Article 66 of the Law on Expropriation (see paragraph 120 above). It follows that this part of the complaint is incompatible *ratione materiae* and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

122. As to the part of the complaint concerning the applicants' claims in respect of the additional 20% compensation under the 2007 Presidential Decree, the Court reiterates its finding that Article 1 of Protocol No. 1 is applicable (see paragraph 112 above) and further notes that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and not inadmissible on any other grounds. It must therefore be declared admissible.

### C. Merits

#### 1. *The parties' submissions*

123. The applicants argued that there had been an unlawful interference with their right to property owing to the domestic authorities' refusal to allow their claims for additional compensation.

124. The Government submitted that the public authority's interference with the applicants' right to property had been necessary in a democratic society in the interest of the economic well-being of the country (more precisely for the improvement of the city's appearance) and had been in line with the domestic legislation.

#### 2. *The Court's assessment*

##### (a) **Whether there was an interference**

125. Article 1 of Protocol No. 1 contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and sets out the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that a State is entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not unconnected, however: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of possessions and are therefore to be construed in the light of the principle laid down in the first rule (see, for example, *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 48, 19 February 2009, and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 93, 25 October 2012).

126. As noted above, in the present cases, the applicants have not challenged the lawfulness of the BCEA's actions and the expropriation procedure before the domestic courts and thus the Court will not deal with the lawfulness and the proportionality of the interference with the applicants' right to the ownership of their flats. For that reason, unlike cases concerning expropriation of the property where the issue of alleged unlawful refusal to pay compensation would be dealt with in the context of

the lawfulness and the proportionality of the expropriation itself, here the Court has to decide whether the refusal to pay the additional 20% compensation itself constituted an interference with the applicants' right to peaceful enjoyment of their possessions.

127. The Court notes that in cases of disputes between private parties a court decision rejecting a pecuniary claim will not necessarily amount to an interference with the right to peaceful enjoyment of possessions unless such decision is arbitrary or otherwise manifestly unreasonable (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I), but in the present cases the applicants alleged that the State had refused to pay them additional compensation unlawfully. Nonetheless, their complaints under Article 1 of Protocol No. 1 are mainly focused on the inconsistent approach of the domestic courts and alleged arbitrariness of their decisions. Therefore, the existence of interference depends on whether the domestic courts indeed decided arbitrarily. This question is inseparable from the issue of the lawfulness of the interference (see *Damjanac v. Croatia*, no. 52943/10, §§ 88-89, 24 October 2013) and will be examined below.

**(b) Whether the interference was lawful**

128. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Guiso-Gallisay v. Italy*, no. 58858/00, § 82, 8 December 2005, and *Lekić v. Slovenia* [GC], no. 36480/07, § 94, 11 December 2018). The requirement of lawfulness, within the meaning of the Convention, demands compliance with the relevant provisions of domestic law and compatibility with the rule of law (see *Kushoglu v. Bulgaria*, no. 48191/99, § 49, 10 May 2007; *Parvanov and Others v. Bulgaria*, no. 74787/01, § 44, 7 January 2010; and *Seryavin and Others v. Ukraine*, no. 4909/04, § 40, 10 February 2011).

129. Moreover, the existence of a legal basis is not in itself sufficient to satisfy the principle of lawfulness. When speaking of "law", Article 1 of Protocol No. 1 alludes to a concept which comprises statutory law as well as case-law (see *Mullai and Others v. Albania*, no. 9074/07, § 113, 23 March 2010).

130. The Court reiterates that the parties disagreed as to whether the situation at hand could be regarded as expropriation for State needs. The Court refers in this connection to its above conclusion that the applicants' claim that their flats were expropriated for State needs was at least supported by a line of Supreme Court case-law (see paragraph 111 above). In these circumstances, it was essential that the domestic courts to which the applicants turned for protection would provide a clear and comprehensive answer regarding the question whether the applicants were entitled to the additional 20% compensation payment they claimed.

131. However, the domestic courts, and more specifically the Supreme Court, which is the highest judicial body to which the applicants had ordinary recourse, delivered judgments containing conflicting assessments of the same situation in the applicants' cases and in cases brought by other individuals.

132. Moreover, despite the applicants' direct references to previous final decisions in which similar claims had been allowed, the Supreme Court remained silent in its decisions concerning their cases and did not make any clarifications as to why it had reached a different conclusion in the present cases (see paragraph 47 above).

133. The Court has already stressed on many occasions that the role of a supreme court is precisely to resolve such conflicts, and if conflicting practice develops within one of the highest judicial authorities in a country, that court itself becomes a source of legal uncertainty, thereby undermining the principle of legal certainty and weakening public confidence in the judicial system (compare, *mutatis mutandis*, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 123, 29 November 2016).

134. The Court has also held that where such manifestly conflicting decisions interfere with the right to peaceful enjoyment of possessions and no reasonable explanation is given for the divergence, such interferences cannot be considered lawful for the purposes of Article 1 of Protocol No. 1 to the Convention because they lead to inconsistent case-law which lacks the required precision to enable individuals to foresee the consequences of their actions (see, *mutatis mutandis*, *Jokela v. Finland*, no. 28856/95, § 65, ECHR 2002-IV; see also *Saghinadze and Others v. Georgia*, no. 18768/05, §§ 116-18, 27 May 2010; and *Brezovec*, cited above, § 67).

135. Having regard to the above considerations, the Court concludes that the domestic courts' decisions, and in particular the relevant decisions of the Supreme Court, refusing the applicants' claims, constituted an interference with their right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1. Such interference was incompatible with the principle of lawfulness and hence contravened Article 1 of Protocol No. 1 to the Convention. This finding makes it unnecessary to examine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the applicants' fundamental rights.

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

### III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL No. 1

137. The applicants complained that they had suffered discrimination on account of the domestic courts' refusal to award them additional

compensation when other individuals in the same situation had been paid such compensation. In this connection, they relied on Article 14 of the Convention, which reads as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... property ... or other status.”

138. The Government submitted that the applicants had failed to argue on which ground they had been discriminated against. They further submitted that the applicants’ complaint in this regard had to be rejected as manifestly ill-founded.

139. The applicants maintained that while their neighbours in the same situation had received additional compensation, their claims had been dismissed without any reasonable justification.

140. The Court reiterates that in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Article 14 does not prohibit all differences in treatment, but only those differences based on an identifiable, objective or personal characteristic, or “status”, by which individuals or groups are distinguishable from one another (see *Carvalho Pinto de Sousa Morais v. Portugal*, no. 17484/15, §§ 44-45, 25 July 2017).

141. In the present cases, the applicants relied on domestic court judgments in which claims by other individuals similarly affected by the BCEA’s order of 31 May 2011 had been allowed. However, they failed to argue that the difference in treatment was based on an identifiable personal characteristic. In these circumstances, the Court considers that the complaint of discriminatory treatment is unsubstantiated (compare *Xuereb v. Malta* (dec.), no. 50867/09, 20 September 2011).

142. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. 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

### 1. Pecuniary damage

144. The applicants claimed the following amounts in respect of pecuniary damage:

(i) the applicant in application no. 66249/16 claimed 24,601 Azerbaijani manats (AZN) (approximately 11,900 euros (EUR) at the time of submission of the claim);

(ii) the applicant in application no. 66271/16 claimed AZN 20,412 (approximately EUR 9,870 at the time of submission of the claim);

(iii) the applicant in application no. 75978/16 claimed AZN 18,225 (approximately EUR 8,810 at the time of submission of the claim);

(iv) the applicant in application no. 77309/16 claimed AZN 11,295 (approximately EUR 5,460 at the time of submission of the claim);

(v) the applicant in application no. 77691/16 claimed AZN 18,306 (approximately EUR 8,850 at the time of submission of the claim);

(vi) the applicant in application no. 1038/17 claimed AZN 17,446 (approximately EUR 8,840 at the time of submission of the claim);

(vii) the applicant in application no. 52821/17 claimed AZN 21,870 (approximately EUR 11,400 at the time of submission of the claim).

145. In support of their claims, the applicants submitted the sale and purchase contracts of their flats. The claimed amounts were calculated as 30% (20% + 10%) of the amount of the purchase price indicated in those contracts.

146. The Government alleged that the applicants had already received fair and adequate compensation for their flats and asked the Court to dismiss their claims under this head.

147. Under the terms of Article 41 of the Convention, the Court may only award just satisfaction to an applicant if it “finds that there has been a violation of the Convention or the Protocols thereto” with respect to that applicant (see *Apostolovi v. Bulgaria*, no. 32644/09, § 116, 7 November 2019). In the present cases, the applicants’ complaint concerning compensation for hardship was declared inadmissible. It follows that their claims in this regard must be rejected.

148. Regard being had to the Court’s finding of a violation of Article 1 of Protocol No. 1 in respect of the applicants’ complaint concerning the additional 20% compensation under the 2007 Presidential Decree, it considers that an award should be made in this regard. In this connection, the Court notes that the claims in this regard appear to have been calculated by the applicants as 20% of the amount of the purchase price actually paid to them. As noted above, under the 2007 Presidential Decree, the amount in question should be calculated as a percentage of the total compensation determined on the basis of the market price of the expropriated property (see paragraph 106 above). In the present cases, all applicants received a



standard compensation in the amount of AZN 1,500 per sq. m and there is no information in the case files about whether this was lower or higher than the “market price” pursuant to the domestic expropriation legislation. However, in so far as the applicants never challenged the lawfulness of the expropriation procedure itself and the amount of original compensation that they received (that is, the purchase prices indicated in the sale and purchase contracts), and the Government did not question the premise on which the applicants’ claim was based and never argued that they had received amounts higher than the market value of their properties, the Court considers that, in the circumstances of the present cases, the amount claimed by the applicants can be calculated on the basis of the respective purchase prices.

149. As noted above, the claims in the present cases were expressed in Azerbaijani manats. As a general practice, in cases where just satisfaction claims (under various heads) were made in the national currency, the Court has converted them into euros as of the date of submission of the claims (see *Shukurov v. Azerbaijan*, no. 37614/11, § 33, 27 October 2016, with further references, and *Khadija Ismayilova v. Azerbaijan*, nos. 65286/13 and 57270/14, § 180, 10 January 2019). The Court finds that it is appropriate to follow the above-mentioned approach in the present cases, and thus the conversion rate to be used in respect of the applicants’ claims for pecuniary damage should be the rate applicable on the date on which the claim was submitted. It therefore awards the following sums under this head, plus any tax that may be chargeable on those amounts to the applicants:

- (i) EUR 7,930 to the applicant in application no. 66249/16;
- (ii) EUR 6,580 to the applicant in application no. 66271/16;
- (iii) EUR 5,880 to the applicant in application no. 75978/16;
- (iv) EUR 3,640 to the applicant in application no. 77309/16;
- (v) EUR 5,900 to the applicant in application no. 77691/16;
- (vi) EUR 5,500 to the applicant in application no. 1038/17;
- (vii) EUR 7,600 to the applicant in application no. 52821/17.

## 2. *Non-pecuniary damage*

150. Each applicant claimed AZN 10,000 (approximately EUR 4,840 at the time of submission of the claims by applicants in applications nos. 66249/16, 66271/16, 75978/16, 77309/16, 77691/16 and 1038/17 who submitted their claims jointly on the same date and approximately EUR 5,210 at the time of submission of the claim by the applicant in application no. 52821/17 who submitted her claim individually on a different date) for non-pecuniary damage.

151. The Government reiterated that the applicants had received reasonable compensation for their properties.

152. The Court considers that the applicants suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation of Article 1 of Protocol No.1 to the Convention. Ruling on an equitable basis, the Court awards each of the applicants the sum of EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### **B. Costs and expenses**

153. Each applicant also claimed AZN 5,000 for the costs and expenses incurred before the domestic courts and the Court.

154. The Government submitted that the applicants had not submitted any evidence proving that they had actually incurred any costs and expenses and asked the Court to reject their claims under this head. In application no. 52821/17, the Government considered, alternatively, that the sum of AZN 1,000 would constitute fair compensation under this head.

155. 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. Under Rule 60 of the Rules of Court, all claims for just satisfaction must be itemised and submitted in writing together with any relevant supporting documents, failing which the Chamber may reject the claim in whole or in part. In the present case, the claims were neither itemised nor supported by any documentary evidence. The Court therefore rejects the applicants' claims in respect of costs and expenses (compare *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017).

### **C. Default interest**

156. 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. *Decides* to join the applications;
2. *Declares* the part of the complaint under Article 1 of Protocol No. 1 to the Convention concerning the additional 20% compensation under the 2007 Presidential Decree admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*

- (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
- (i) EUR 7,930 (seven thousand nine hundred thirty euros) to the applicant in application no. 66249/16 in respect of pecuniary damage;
  - (ii) EUR 6,580 (six thousand five hundred eighty euros) to the applicant in application no. 66271/16 in respect of pecuniary damage;
  - (iii) EUR 5,880 (five thousand eight hundred eighty euros) to the applicant in application no. 75978/16 in respect of pecuniary damage;
  - (iv) EUR 3,640 (three thousand six hundred forty euros) to the applicant in application no. 77309/16 in respect of pecuniary damage;
  - (v) EUR 5,900 (five thousand nine hundred euros) to the applicant in application no. 77691/16 in respect of pecuniary damage;
  - (vi) EUR 5,500 (five thousand five hundred euros) to the applicant in application no. 1038/17 in respect of pecuniary damage;
  - (vii) EUR 7,600 (seven thousand six hundred euros) to the applicant in application no. 52821/17 in respect of pecuniary damage;
  - (viii) EUR 3,000 (three thousand euros) to each applicant, in respect of non-pecuniary damage;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 21 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature\_p\_2}

Victor Soloveytchik  
Registrar

Síofra O'Leary  
President

ALIYEVA AND OTHERS v. AZERBAIJAN JUDGMENT

## APPENDIX

List of cases:

No.	Application no. and date of introduction	Applicant's name, year of birth and place of residence	Date of the final decision by the Supreme Court
1.	66249/16 08/11/2016	<b>Zulfiya ALIYEVA</b> 1971 Baku, Azerbaijan	20 April 2016
2.	66271/16 08/11/2016	<b>Nazila MAMMADOVA</b> 1964 Baku, Azerbaijan	20 April 2016
3.	75978/16 02/12/2016	<b>Svetlana FEDOROVA</b> 1954 Baku, Azerbaijan	28 April 2016
4.	77309/16 07/12/2016	<b>Turan ALIYEV</b> 1989 Baku, Azerbaijan	5 May 2016
5.	77691/16 07/12/2016	<b>Guteyis HUSEYNOVA</b> 1973 Baku, Azerbaijan	19 May 2016
6.	1038/17 13/12/2016	<b>Tatyana MURATOVA</b> 1944 Baku, Azerbaijan	5 October 2016
7.	52821/17 14/07/2017	<b>Nelli YUSIFZADA</b> 1942 Baku, Azerbaijan	3 May 2017