

## **Juma Mosque Congregation and Others v. Azerbaijan: The European Court declared the application inadmissible for lack of evidence**

***Application number: 15405/04***

HRWF (10.11.2018) – Occasionally, reports are published about violations of religious freedom in Azerbaijan and the case of the closure of the historical Juma Mosque located in the Old City of Baku, which is a UNESCO World Heritage Site, is quite often presented as an illegal action of the government. Although the religious legislation is very repressive in Azerbaijan, the case of the Juma Mosque is more complicated than it is usually exposed. The European Court of Human Rights was referred to by a newly created congregation in the aftermath of the collapse of the Soviet Union and dismissed all the claims of alleged violations of Article 9 of the Convention.

On 28 April 2004, the Juma Mosque Congregation (Cümə Məscidi Dini İcması – “the Congregation”), a Muslim religious community in Baku. The individual applicants, Mr İlgar Allahverdiyev, Mr Azer Samedov, Mr Azad Isayev, Mr İlgar Alizade, Mr Najaf Allahverdiyev, Mr Adil Huseynov, Mr Ramin Tahirov, Mr Parviz Hajiyev, Mr Eldar Sultanov and Mr Namin Akhundov (“the applicants”) filed an application against Azerbaijan.

The applicant organization was the Congregation of the Juma Mosque (“the Congregation”). The individual applicants were ten Azerbaijani nationals. The mosque, built in the 11th century, was used as a Muslim house of worship until Azerbaijan became part of the Soviet Union. In 1937 the mosque was closed to the public. For a time it was used as a warehouse and in 1968 the Soviet government converted it into a carpet museum. After Azerbaijan declared its independence in 1991, the applicants formed a new local community of Muslims and took possession of the former Juma mosque.

After a series of events involving government’s refusal to register the congregation as a religious organization and the eviction of the congregation from the mosque as a result of a domestic court's judgment, the applicants applied to the Court in April 2004 complaining, *inter alia*, under Articles 9 and 11. They contended that the refusal of the domestic authorities (the State Committee for the Affairs of Religious Organisations/ SCARO) to re-register the Congregation and making such registration conditional on submission to the Caucasus Muslims Board had violated the Congregation members’ rights to freedom of religion and freedom of association”, under Articles 9, 10, and 11. They also claimed that the eviction of the Congregation from Juma Mosque, which they had previously occupied for twelve years without any interference, had violated the Congregation members’ rights to manifest their beliefs publicly in community with each other and their rights to freedom of expression and assembly. They pretended that “they had been subjected to discrimination on the basis of their religious beliefs and political opinions” (Article 14, in conjunction with Articles 9, 10 and 11).

In its judgment of 8 January 2013, the Court unanimously declared the application inadmissible.

### ***Complaint of the Congregation concerning the non re-registration as a religious organization***

“47. At the outset the Court notes that it only has the competence to examine complaints of violations of the Convention arising from events that have occurred after the Convention entered into force in respect of the High Contracting Party concerned

(...). Accordingly, the Court has the competence to examine only the events that took place after 15 April 2002, the date of the Convention's entry into force in respect of Azerbaijan.

48. In so far as part of the events concerning re-registration by the SCARO occurred after 15 April 2002, the Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to first use the remedies provided by the national legal system, thus dispensing States from answering to an international body for their actions before they have had an opportunity to put matters right through their own legal systems."

The European Court concluded that this part of the applicants' complaints had to be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

### ***Complaint concerning the eviction of the Congregation from Juma Mosque***

"60. In this connection, the Court notes that at the time of the Convention's entry into force in respect of Azerbaijan the Congregation had no proprietary rights to Juma Mosque under domestic law. The SDEA decision of 28 December 1992 allowed the Congregation to be established as an organisation and recommended its State registration (see paragraph 7 above); however, it did not contain any provisions granting the organisation any proprietary rights to Juma Mosque or, as the applicants put it, "charging the organisation with the use and care of Juma Mosque". By the time of the Convention's entry into force, no lease existed between the Congregation and the Reserve nor was there any other document that would have granted the Congregation a lawful right to occupy the building. The applicants admitted in the domestic proceedings that they had applied to the Reserve for a lease to be granted in their favour, but that their request had been refused. No plausible and convincing argument has been put before the Court showing that there existed an obligation on the part of the Reserve (the registered owner of the State-owned building) to lease it specifically to the applicants. Furthermore, the Court cannot find that the mere fact that the public authorities tolerated the applicants' continued use of the State-owned building for religious purposes for a number of years gave rise to any type of positive obligation under Article 9.

61. The Court reiterates that the Convention cannot be interpreted as giving a right to a religious community to obtain a place of worship from the public authorities (see *Griechische Kirchengemeinde München und Bayern e.V. v. Germany* (dec.), 52336/99, 18 September 2007).

62. (...) The eviction, in itself, did not amount to any form of punishment for conducting religious services *per se*, or to a ban on the Congregation's functioning as such, or to a restriction of its ability to lawfully establish a new place of worship elsewhere. Furthermore, the Court considers that the Congregation's eviction, as such, did not restrict its individual members' "freedom to manifest [their] religion" as it did not prevent them from performing their religious activities in other mosques or places of worship available for religious activity, even if the Congregation did not establish a new place of worship itself. In this connection, the Court also notes that the applicants have not argued that the Congregation members belonged to a particular denomination with a set of religious beliefs differing from those of other Muslim denominations existing in Azerbaijan, or that the site of Juma Mosque had any special sacred role in their community rather than merely being a place where they worshipped."

The Court considered that, in this case, the eviction of the Congregation from a building which it had no lawful right to occupy did not amount to an unjustified interference with the applicants' right to freedom of religion, as guaranteed by Article 9 interpreted in the

light of Article 11 of the Convention. It follows that this complaint is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.”

### ***Complaints concerning the alleged persecution of the Congregation members***

“64. Relying on Articles 3 and 5 of the Convention, some of the applicants complained that they had been arbitrarily detained and ill-treated by the police and that their complaints in this regard had not been investigated. They also complained under Article 8 of the Convention that some of them had been under telephone and other means of electronic surveillance by the authorities and that on 30 July 2004 the authorities had unlawfully raided a private home and arrested several members of the Congregation.

65. However, the applicants did not submit any evidence in support of those allegations, such as medical records, detention orders, or copies of complaints lodged with the domestic authorities. Nor does it appear from the material submitted that they have ever lodged any complaints with the domestic authorities in connection with these allegations.

66. As regards the arrest and conviction of Mr I. Allahverdiyev, the Court finds that those events were not directly relevant to the subject matter of the present application and, in any event, are the subject of a separate examination within the framework of application no. 36083/05 (see paragraph 17 above).

67. Thus, in the light of all the material in its possession, and in so far as the matters complained of are within its competence and do not relate to the issues raised in the above-mentioned application no. 36083/05, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.”

### ***The remainder of the application***

“68. The applicants complained under Articles 6 and 13 of the Convention that the domestic proceedings concerning their eviction from Juma Mosque had been unfair and ineffective. In particular, they complained that the domestic courts had not been independent and impartial and that the proceedings had been in breach of the “reasonable time” requirement in that they had taken a “much shorter time than is normal in Azerbaijan”.

69. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

70. The applicants further complained under Article 1 of Protocol No. 1 to the Convention that the police had seized some personal property belonging to the applicants from the mosque, such as a laptop computer and cash, without offering any compensation.

71. However, the Court observes that the applicants have never raised this complaint with the domestic authorities. It follows that this part of the applicants’ complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

72. The applicants complained under Article 14, in conjunction with Articles 9, 10 and 11 of the Convention, that they had been subjected to discrimination on the basis of their religious beliefs and political opinions.

73. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously  
*Declares* the application inadmissible.”