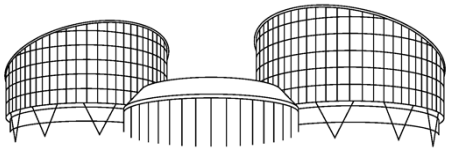

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MUSTAFA HAJILI AND OTHERS v. AZERBAIJAN

(Applications nos. 69483/13 and 2 others – see appended list)

JUDGMENT

Art 11 • Freedom of peaceful assembly • Unlawful and unjustified refusal to authorise holding of public assemblies, at all or at planned locations, by members of a political group • Absence of relevant and sufficient reasons • Fair balance not struck between competing interests at stake

STRASBOURG

6 October 2022

FINAL

06/01/2023

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

In the case of Mustafa Hajili 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 Hüseynov,
Ivana Jelić,
Arnfinn Bårdsen,
Kateřina Šimáčková, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 69483/13, 76319/13 and 30456/14) 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 six Azerbaijani nationals whose names are listed in the appended table ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaints concerning Articles 6 (the right to a reasoned judgment), 10 (the right to freedom of expression, raised only in application no. 69483/13) and 11 (the right to freedom of assembly) of the Convention and to declare the remainder of application no. 30456/14 inadmissible;

the parties' observations;

Having deliberated in private on 30 August 2022,

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

INTRODUCTION

1. The applicants complained that the refusals by the domestic authorities to authorise their peaceful public assemblies, or to authorise those assemblies at the planned locations, violated their right to freedom of assembly under Article 11 of the Convention. The applicants in application no. 69483/13 also referred to Article 10 of the Convention in that regard. Furthermore, all applicants complained under Article 6 of the Convention that the domestic courts' decisions were not sufficiently reasoned.

THE FACTS

2. The applicants' details are set out in the appended table. They were represented by Mr R. Mustafazade and Mr A. Mustafayev, lawyers practising in Azerbaijan.

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

4. The facts of the case may be summarised as follows.

I. REQUESTS TO AUTHORISE THE PUBLIC ASSEMBLIES

5. The applicants in all three applications were members of a political group called the Public Chamber (*İctimai Palata*). As members of that group, they planned to hold several assemblies in 2012 in Baku.

A. Application no. 69483/13

6. The applicants in application no. 69483/13 planned an assembly (namely, a picketing), to be held on 22 April 2012. According to a notice that they gave to the Baku City Executive Authority ("the BCEA") in advance, the assembly was scheduled to take place from 12 p.m. to 1 p.m. in front of the BCEA, with an expected participation of fifty individuals.

7. The purpose of the assembly was to demand the removal of unwritten restrictions placed on the freedom of assembly, and to demand political reforms and freedom for political prisoners.

8. However, by a letter of 18 April 2012, the BCEA refused to authorise the assembly. The BCEA noted that it had designated a location for another assembly with a similar cause on the same day – namely the assembly planned by the applicants in application no. 76319/13 – and therefore the assembly proposed by the applicants in application no. 69483/13 was "to no purpose" (*keçirilməsi məqsədəuyğun hesab olunmur*).

9. It appears that the planned assembly was not eventually held.

B. Application no. 76319/13

10. The applicants in application no. 76319/13 planned an assembly (namely, a march followed by a meeting), to be held on 22 April 2012. According to a notice that they gave to the BCEA in advance, the assembly was scheduled to take place from 4 p.m. to 6 p.m., with an expected participation of ten thousand people. The applicants proposed three different locations (one in the Nizami district of Baku – namely, a square in front of the Tabriz cinema – and the other two in the Binagadi and Narimanov districts) for the holding of the assembly. They asked the BCEA to agree to one of those locations.

11. According to the content of the slogans to be used, the purpose of the assembly was, *inter alia*, to demand new parliamentary elections, political reforms, freedom for political prisoners and protection of the right to freedom of assembly, and to protest against corruption and violation of property rights.

12. However, by a letter of 18 April 2012, the BCEA refused to authorise the assembly at any of the locations proposed by the applicants, and proposed another location on the outskirts of Baku – namely, the grounds of a driving school situated in the 20th residential area of the Sabail district. The BCEA noted that the locations indicated by the applicants were "areas with intense

traffic, and therefore it was not possible to hold assemblies there". The BCEA also noted that "it was not possible to ensure security in respect of the [planned assembly], considering the serious problems that [the assembly] would cause to the free movement of citizens who did not want to participate in it, and to the smooth functioning of transport".

13. It appears that following the refusal of the authorisation, the applicants decided to hold the assembly at the place proposed by the BCEA.

C. Application no. 30456/14

14. The applicant in application no. 30456/14 planned an assembly (namely, a march), to be held on 13 October 2012. According to a notice that the applicant gave to the BCEA in advance, the assembly was scheduled to take place from 4 p.m. to 6 p.m., with an expected participation of ten thousand people, starting at a square adjacent to the Parliament Avenue, following that avenue, and finishing in front of the Parliament building.

15. The purpose of the assembly was to demand early elections to the Parliament.

16. By a letter of 10 October 2012, the BCEA refused to authorise the assembly at the location indicated by the applicant and proposed another location on the outskirts of Baku (the same place proposed by the BCEA in application no. 76319/13 – namely, the grounds of a driving school situated in the 20th residential area of the Sabail district). As in application no. 76319/13, the BCEA noted that the location indicated by the applicants was an "area with intense traffic, and therefore it was not possible to hold assemblies there", and that "it was not possible to ensure security in respect of the [planned assembly], considering the serious problems that [the assembly] would cause to the free movement of citizens who did not want to participate in it, and to the smooth functioning of transport".

17. It appears that the planned march was not eventually held.

II. DOMESTIC COURT PROCEEDINGS

18. Having received the refusal letters, the applicants lodged complaints (in the form of a civil action) against the BCEA before the Baku Administrative Economic Court No. 1, arguing that their right to freedom of assembly had been violated and asking the court to declare the BCEA's decisions unlawful (in all three applications) and order the BCEA to authorise the assembly (in application no. 30456/14) or to pay non-pecuniary damages (in applications nos. 69483/13 and 76319/13).

19. In each case, the applicants challenged the lawfulness and proportionality of the BCEA's decisions.

20. The applicants in application no. 69483/13 argued in particular that it had been unlawful to refuse the authorisation of their assembly simply

because another assembly with similar slogans had been planned elsewhere in the city on the same date.

21. The applicants in application no. 76319/13 argued in particular that one of the locations that they had proposed – namely, a square in front of the Tabriz cinema, in the Nizami district of Baku – was on the BCEA's indicative list of places for the holding of public assemblies. That list had been prepared by the BCEA in accordance with Article 9 § VI of the Law on Freedom of Assembly (see paragraph 28 below), and published in the Official Gazette, *Azerbaijan* newspaper (the applicants had submitted a copy of the list in question to the domestic courts, but not to the Court).

22. The applicant in application no. 30456/14 argued in particular that the BCEA had failed to present any evidence in support of its allegations.

23. Furthermore, the applicants in application no. 76319/13 argued that the location on the outskirts of Baku proposed by the BCEA was unfit for holding public assemblies, and the applicant in application no. 30456/14 argued that the planned location of the assembly was very important for the purpose of the assembly, since the demands that the participants intended to voice were related to and addressed to the Parliament.

24. On 28 August 2012, 29 August 2012 and 17 April 2013 respectively, the Baku Administrative Economic Court No. 1 dismissed the applicants' complaints, accepting the BCEA's findings, as indicated in its above-mentioned letters (see paragraphs 8, 12 and 16 above), as valid reasons for refusing to authorise the assemblies.

25. The applicants appealed, reiterating their previous complaints and arguments.

26. On 13 December 2012, 20 December 2012 and 13 August 2013 respectively, the Baku Court of Appeal upheld the judgments of the Baku Administrative Economic Court No. 1, largely reiterating the first-instance court's findings. On 13 March 2013, 15 May 2013 and 20 November 2013 respectively, the Supreme Court upheld the judgments of the appellate court in the same manner.

27. None of the domestic courts addressed the applicants' arguments summarised in paragraphs 20-23 above.

RELEVANT LEGAL FRAMEWORK

28. At the material time, the relevant articles of the Law on Freedom of Assembly of 13 November 1998 ("the Law") provided as follows:

Article 5. Notification of convening an assembly

"I. A person or persons organising any assembly, listed in Article 3 of the present Law, must notify in advance the relevant body of the executive authority, in written form. A notification must be submitted, as a rule, at least five days prior to the day of convening the intended assembly, for the purposes of authorising the assembly's time and place, and the route of a march, in order to allow the relevant body of the executive

authority to make the necessary arrangements. Submission of a notification in less than five days prior to the intended assembly must be justified by the organisers.

II. A written notification shall include the following information:

1) the form of the intended assembly;

2) the general purpose of the assembly;

3) the place and time of convening of the assembly;

4) the approximate number of participants;

5) in respect of a march, its proposed route (the place where the march begins, its distance and an end location);

6) the name, surname, patronymic and address of the organisers of the assembly;

7) the date of submission of the written notification;

8) contact telephone numbers or, in the event of their absence, contact addresses.

Organisers may submit additional information before the relevant body of the executive authority makes a decision.

III. All the organisers of the assembly must sign the written notification.

IV. Submission of a written notification for spontaneous assemblies is not required. Spontaneous assemblies may be restricted or stopped, in accordance with the requirements specified in Articles 7 and 8 of the present Law."

Article 7. Lawful restrictions on the freedom of assembly

"I. No restrictions shall be placed on the right to freedom of assembly other than those that are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

II. Restrictions on the freedom of assembly provided for under paragraph I of the present Article must be proportionate to the aim pursued. To achieve that aim, such a restriction must not exceed necessary and sufficient limits.

III. Measures taken to restrict the freedom of assembly provided for under paragraph I of the present Article must be strictly necessary for achieving the aim which served as the reason for imposing the restriction.

IV. Freedom of assembly may be restricted in various ways including a change to the time and place of the assembly or a change to the route of a march, but only for the purposes prescribed under paragraph I of this Article."

Article 8. Prohibition or stopping of an assembly

"I. Assemblies accompanied by calls for discrimination, discord (hostility), or violence, or incitement to national, racial or religious discord shall be prohibited.

II. Assemblies which promote war shall be prohibited.

III. The holding of a peaceful assembly with political goals shall be prohibited in the following cases:

1) Twenty-four hours prior to the day and until closure of constituencies on the day of elections of the President of the Republic of Azerbaijan (on the entire State territory),

elections of deputies to the *Milli Mejlis* [(the Parliament)] of the Republic of Azerbaijan (on the entire State territory), elections of deputies to the *Ali Mejlis* [(the Parliament)] of the Nakhichevan Autonomous Republic (on the territory of the Nakhichevan Autonomous Republic), and municipal elections (on the territory of the respective city and district);

2) Twenty-four hours prior to the day and until closure of constituencies on the day of a referendum.

IV. On account of the need to implement security measures during international events of considerable State importance, in the cities and districts where those events are conducted, the holding of peaceful assemblies with political goals on the eve of, and on the days of, those events may be prohibited by a decision of the relevant body of the executive authority, in accordance with the requirements prescribed under Article 7 of the present Law.

V. If necessary in a democratic society, an assembly may be prohibited by an order of the relevant body of the executive authority, in accordance with the requirements prescribed under Article 7 of the present Law.

VI. If necessary, an assembly may be stopped by an order of the relevant body of the executive authority, in accordance with the requirements prescribed under Article 7 of the present Law.

VII. Prohibition or stopping of an assembly in accordance with paragraphs IV, V and VI of the present Article shall be considered as a measure of last resort and shall be applied only when the restrictions provided for under Article 7 of the present Law are not sufficient.

VIII. During a state of emergency, the holding of ... assemblies on the territory where that state of emergency is applied may be restricted or prohibited, in accordance with the requirements prescribed under the Law of the Republic of Azerbaijan on States of Emergency."

Article 9. Restriction or prohibition placed on an intended place and time of a peaceful assembly

"I. Any restriction on an intended place of a peaceful assembly shall be placed in accordance with the criteria determined under Article 7 of the present Law.

II. If another assembly has [already] been arranged at the place and time stipulated in a written notification submitted by the organisers of a [counter-]assembly and if there are sufficient grounds to conclude that a counter-assembly may cause a conflict between the parties, the relevant body of the executive authority shall propose to the organisers that they indicate a different place and time for the counter-assembly. A written notification of the amended time and place shall be submitted to the relevant body of the executive authority at least three days prior to the new date of an event. In the event that a counter-assembly is held, the police authorities shall take measures to ensure the security of the participants of both the assembly and the counter-assembly.

III. The holding of gatherings, meetings, demonstrations and marches in the following places may be prohibited:

1) Within a radius of 200 metres around the buildings of the *Milli Madjlis* ... of Azerbaijan [(the Parliament)]; the Presidential Palace ...; the [official] residence of the President of ... Azerbaijan; the Cabinet of Ministers ...; the *Ali Madjlis* of the Nakhchivan Autonomous Republic; the Cabinet of Ministers of the Nakhchivan Autonomous Republic; central, district and city executive authority bodies (the list of

which shall be defined by the relevant executive authority); and the Constitutional Court of ... Azerbaijan, the Supreme Court, the appellate courts and the Supreme Court of the Nakhchivan Autonomous Republic;

2) on bridges; in tunnels; at construction sites; at production sites which present a danger to human life and health, and other sites, use of which requires compliance with special technical norms for safety; specially protected nature areas and sites; protection zones of trunk pipelines; electrical networks with tension exceeding 1000 volts; airports; underground [railways]; railway facilities; defence facilities; technical facilities for water supply and sewerage systems; oil wells and waters;

3) in places allocated by the relevant body of the executive authority for holding special State events;

4) in areas used for military purposes and in places located closer than 150 metres to the boundaries of those areas, or, if necessary, within the security distance between those areas and participants of an assembly;

5) on the sites of penal facilities, pre-trial detention facilities, and psychiatric medical institutions, as well as in places located closer than 150 metres to the boundaries of those sites.

IV. The holding of assemblies with political content in places of pilgrimage and worship, and in cemeteries, may be restricted.

V. The number of picketers shall not exceed fifty persons and [picketers] shall not stand closer than ten metres to the entrance of a picketed location, shall not create obstacles for entry to and exit from the picketed location, and shall not use amplifiers above ten watts.

VI. The relevant body of the executive authority shall allocate in each city and district special areas for conducting gatherings, meetings and demonstrations. A list of places proposed for gatherings, meetings and demonstrations shall be published in the local press and shall also be brought to the attention of the population by other means. Organisers may choose one of the places proposed for gatherings, meetings and demonstrations. As a result of a petition, the relevant body of the executive authority may change the list of proposed places for gatherings, meetings and demonstrations.

VII. The time for holding an assembly may be restricted by the relevant body of the executive authority, in accordance with the requirements of Article 7 of the present Law."

THE LAW

I. JOINDER OF THE APPLICATIONS

29. 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 VIOLATIONS OF ARTICLES 10 AND 11 OF THE CONVENTION

30. The applicants complained that the refusals by the domestic authorities to authorise their peaceful public assemblies or to authorise those

assemblies at the planned locations violated their right to freedom of assembly as provided for in Article 11 of the Convention. The applicants in application no. 69483/13 also complained that the refusals violated their right to freedom of expression as provided for in Article 10. Articles 10 and 11 of the Convention read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

31. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The scope of the applicants' complaints in application no. 69483/13

32. The Court notes that, in the circumstances of application no. 69483/13, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, a *lex specialis*. It is therefore unnecessary to take the complaints under Article 10 into consideration separately. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them, secured by Article 10, is one of

the objectives of freedom of peaceful assembly enshrined in Article 11 (see, among many other authorities, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, § 37, ECHR 1999-VIII; *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 85-86, 15 October 2015; and *Tuskia and Others v. Georgia*, no. 14237/07, § 73, 11 October 2018; see also the analysis in paragraph 66 below).

2. The parties' submissions

33. The applicants argued in particular that the domestic legislation regulating freedom of assembly did not comply with the principles of foreseeability and precision, and allowed for arbitrary interferences. The refusals by the BCEA to authorise the peaceful public assemblies that the applicants had organised (application no. 69483/13), or to authorise the assemblies at the planned locations (applications nos. 76319/13 and 30456/14), were not lawful and were not necessary in a democratic society.

34. The Government argued that the refusal by the BCEA to authorise the public assemblies in question had been in line with domestic law (was prescribed by law), pursued the aim of protecting (preserving) public safety and protecting the rights and freedoms of others, was necessary in a democratic society, and was proportionate to the aim pursued.

3. The Court's assessment

(a) Whether there was an interference

35. The Court notes that the assemblies in question were either not authorised at all, or were not authorised to be held at their planned locations (for further analysis on the latter issue see paragraphs 63-65 below). Those refusals were not based on such fundamental grounds as allegations that the organisers and participants had violent intentions, wanted to incite violence, or wanted to otherwise reject the foundations of a democratic society.

36. The Court considers that both the outright refusal and the refusals to authorise the assemblies at their planned locations constituted an interference with the applicants' right to freedom of assembly (see *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, § 103, 20 October 2005, and *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 405, 7 February 2017).

37. The interference will not be justified under the terms of Article 11 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims set out in paragraph 2 of that Article and is "necessary in a democratic society" for the achievement of that aim or aims.

(b) Whether the interference was lawful

(i) Applicable principles

38. The Court reiterates that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that an impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision as to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action may entail (see, among many other authorities, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I, and *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 64, ECHR 2004-I). The notion of "quality of the law" requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law. It thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 93, 20 January 2020, with further references).

39. In particular, it would be contrary to the rule of law for the discretion granted to the competent authorities to be expressed in terms of an unfettered power. The law must therefore indicate the scope of any such discretion conferred on them and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 249-50, 22 December 2020, with further references).

40. Domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention (ibid., § 254, with further references).

41. However, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (see, among many other authorities, *Gorzelik and Others*, cited above, §§ 64-65; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV; and *Selahattin Demirtaş*, cited above, § 250). The level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question, the field it is designed to cover, and the number and status of those to whom it is addressed (see, among many other authorities, *Gorzelik and Others*, § 65, and *Selahattin Demirtaş*, § 254, both cited above).

42. The role of adjudication vested in the national courts is precisely to dissipate such interpretational doubts as may remain. The Court's power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, in particular the courts, to interpret and apply domestic law (see, among many other authorities, *Gorzelik and Others*, cited above,

§§ 65 and 100; *Kudrevičius and Others*, cited above, § 110; and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 144, 27 June 2017). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018; *Jafarov and Others v. Azerbaijan*, no. 27309/14, § 69, 25 July 2019; and *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, § 108, 26 March 2020).

43. In assessing the lawfulness of an interference, and in particular the foreseeability of the domestic law in question, the Court has regard both to the text of the law and the manner in which it was applied and interpreted by the domestic authorities (see *Jafarov and Others,* cited above, § 70). Practical interpretation and application of the law by the courts must give individuals protection against arbitrary interferences (see *Selahattin Demirtaş*, cited above, § 275).

(ii) Application of the above principles to the present applications

44. In accordance with Article 5 of the Law on Freedom of Assembly ("the Law"), advance written notification was required in order to agree upon the place, time and, when relevant, route of an assembly, with the purpose of enabling the relevant local executive authority – in the present cases, the BCEA – to make the necessary arrangements. Article 7 § IV of the Law provided that freedom of assembly could be restricted in various ways, including by changing the place and/or time of a planned assembly, or changing the route of an assembly planned in the form of a march. Other provisions of the Law provided the relevant local executive authority with broad powers to issue orders so as to prohibit (Article 8 §§ IV and V) or stop (Article 8 § VI) a public assembly; to restrict or change its place, route and/or time (Article 9 §§ II and VII); and to allocate specific areas for public assemblies (Article 9 § VI) (see paragraph 28 above).

45. The Court notes that those provisions were designed to cover a wide spectrum of situations relevant to the notification and authorisation of public assemblies. It might therefore have been inevitable for those provisions to be worded in terms that were arguably not very precise and were rather general or even vague; those terms would then be subject to practical interpretation and application by the domestic authorities, including domestic courts. In this regard, the Court emphasises that practical interpretation and application of the law by the domestic courts in the present applications ought to give the applicants protection against arbitrary interferences. The Court must therefore examine the grounds on which the BCEA refused to authorise the assemblies, and the reasoning of the domestic courts' decisions.

46. The reason for not authorising the assembly in application no. 69483/13 was the BCEA's finding that a location for another assembly

with a similar cause on the same day – namely the assembly planned by the applicants in application no. 76319/13 – had been designated, and therefore the assembly planned by the applicants in application no. 69483/13 was "to no purpose" (see paragraph 8 above).

47. In that regard the Court notes that the BCEA did not ever argue that the two assemblies had been planned to be held in the same place and at the same time and constituted "counter-demonstrations" which might have caused a violent conflict between the participants and justified application of Article 9 § II of the Law (see paragraph 28 above). To the contrary, it is clear that both assemblies were planned by members of the same political group and, indeed, as noted by the BCEA itself, pursued a similar purpose. The Court notes furthermore that neither the relevant domestic law nor the Convention provided for the possibility of banning an assembly simply on the ground that it was comparable to some other assembly planned for the same day. Thus, on the basis of the information before it, the Court cannot see on what basis the outright ban of the assembly was lawful.

48. The reasons for not authorising the assemblies in applications nos. 76319/13 and 30456/14 were the BCEA's finding that the locations proposed by the applicants were "areas with intense traffic" and that "it was not possible to ensure security in respect of the [planned assemblies], considering the serious problems that [the assemblies] would cause to the free movement of citizens who did not want to participate in [them], and to the smooth functioning of transport".

49. In that regard the Court considers that if the authorities argue before a domestic court that there were unsurmountable obstacles to holding an assembly as planned, those authorities would normally be expected to show, at least prima facie, that such obstacles really existed. However, in the present case, the BCEA failed to present any evidence before the domestic courts in this respect.

50. The Court also notes that one of the locations proposed by the applicants in application no. 76319/13, namely, a square in front of the Tabriz cinema, in the Nizami district of Baku, was on the BCEA's indicative list of places for the holding of public assemblies – the list prepared by the BCEA in accordance with Article 9 § VI of the Law (see paragraph 28 above) and published in the State's Official Gazette. That fact was not disputed either by the BCEA before the domestic courts, or by the Government. While such a list is indicative only and there is nothing in the relevant domestic provisions allowing to consider that an assembly could only be held in places figuring on it, it is nevertheless particularly significant that the BCEA failed to explain why the above-mentioned location had been considered to be unfit for holding the assembly in question.

51. The domestic courts in their turn, when seized of the applicants' civil actions, failed to assess the lawfulness of the BCEA's decisions to refuse to authorise the assemblies in question. They endorsed the reasons indicated by

the BCEA in its letters, without addressing the applicants' pertinent arguments (see paragraphs 20-22 above) concerning the arbitrariness of the refusals. The courts in particular failed to examine whether the declaration by the BCEA that the assembly in application no. 69483/13 was "to no purpose" was lawful, and they also did not require the BCEA to produce any evidence in support of its allegations that the assemblies in applications nos. 76319/13 and 30456/14 could not be held in the locations proposed by the applicants.

52. The Court notes that in *Gafgaz Mammadov v. Azerbaijan* (no. 60259/11, § 55, 15 October 2015), it expressed serious concerns about the possibility of public assemblies being abusively banned or dispersed. The Court considers that the circumstances of the present cases confirm the concerns expressed in *Gafgaz Mammadov* (cited above), and show that the manner in which the domestic authorities – the BCEA and the domestic courts – interpreted and applied in practice the domestic law provisions on the notification and authorisation of public assemblies did not give the applicants protection against arbitrary interference. That practical interpretation and application of the domestic law meant that the BCEA could exercise in practice an unfettered discretion to ban public assemblies.

53. The above considerations, taken together, give strong indications that the refusals to authorise the public assemblies in all three applications failed to meet the "prescribed by law" requirement under Article 11 § 2 of the Convention. However, the Court notes that the issues concerning the lawfulness of that interference are closely linked to broader issues arising in respect of whether the interference was "necessary in a democratic society", including the question of the proportionality of the measures taken. The Court considers that, in the circumstances of the present applications, respect for human rights requires it to examine the above-mentioned issues as well. It will therefore proceed to examine those broader issues before reaching a conclusion on all aspects of the alleged violation of Article 11 of the Convention (see, for a similar approach, *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 65, ECHR 2009; *Koretskyy and Others v. Ukraine*, no. 40269/02, § 49, 3 April 2008; and *Gafgaz Mammadov*, cited above, § 57).

(c) Whether the interference pursued a legitimate aim and was "necessary in a democratic society"

(i) Applicable principles

54. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the

legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, among many other authorities, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, *Reports of Judgments and Decisions* 1998-I, and *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 70, ECHR 2006-II).

55. It is not, in principle, contrary to the spirit of Article 11 if, for reasons of public order and national security a High Contracting Party requires that the holding of meetings be subject to authorisation (see *Kudrevičius and Others*, cited above, § 147, and *Oya Ataman v. Turkey*, no. 74552/01, § 37, ECHR 2006-XIV).

56. Notification, and even authorisation procedures, for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering (see *Sergey Kuznetsov v. Russia*, no. 10877/04, § 42, 23 October 2008). However, regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (see *Oya Ataman*, cited above, § 38, and *Berladir and Others v. Russia*, no. 34202/06, § 39, 10 July 2012).

57. The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11 (see *Sáska v. Hungary*, no. 58050/08, § 21, 27 November 2012). Therefore, where the location of the assembly is crucial to the participants, an order to change it may constitute an unjustified interference with their freedom of assembly under Article 11 of the Convention (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 109 *in fine*, ECHR 2001-IX, and *Süleyman Çelebi and Others v. Turkey*, nos. 37273/10 and 17 others, § 109 *in fine*, 24 May 2016).

58. A prohibition on holding public events at certain locations is not incompatible with Article 11, when it is imposed for security reasons (see *Rai and Evans v. the United Kingdom* (dec.), nos. 26258/07 and 26255/07, 17 November 2009) or, as the case may be in respect of locations in the immediate vicinity of court buildings, for protecting the judicial process in a specific case from outside influence, and thereby protecting the rights of others, namely the parties to judicial proceedings. The latter ban should, however, be tailored narrowly to achieve that interest (see *Lashmankin and Others*, cited above, § 440, and *Öğrü v. Turkey*, no. 19631/12, § 26, 17 October 2017).

(ii) Application of the above principles to the present applications

59. The Court reiterates that the BCEA did not authorise the assemblies at all or as requested allegedly because in application no. 69483/13 it had designated a location for another assembly with a similar cause on the same day and in applications nos. 76319/13 and 30456/14, the locations proposed by the applicants were areas with intense traffic, and that the planned assemblies would cause serious problems to the free movement of citizens who did not want to participate in them, and to the smooth functioning of transport.

60. The interference purportedly aimed at ensuring the interests of public safety and the protection of the rights of others.

61. The Court leaves aside the question whether the motives summarised in paragraph 59 above concerned indeed public safety and the protection of the rights of others. Even assuming that there was a legitimate aim, the Court considers that the domestic authorities (both the BCEA and the domestic courts) failed to assess the necessity of the interference in a democratic society for the achievement of such an aim, and to strike a fair balance between the competing interests at stake.

62. Thus, in applications nos. 76319/13 and 30456/14 the authorities failed to take into account the fact that a normal exercise of the right to peaceful public assembly, a gathering of a number of individuals in a public place, inevitably causes disruption to people's ordinary lives to some extent. In the Court's view, even if there was some evidence that the assemblies planned by the applicants would cause serious problems to the free movement of people and transport, that element alone (by itself) could not serve as a sufficient reason for the BCEA to ban the holding of the assemblies at their planned locations. The purpose of the prior notification and authorisation procedure provided for under the domestic law was precisely to enable the BCEA to take measures to accommodate the planned assemblies. The BCEA could have eliminated or minimised the negative effects (if any) of the assemblies on the free movement of people and transport by applying such measures as, for example, informing the public about the upcoming assemblies, putting road diversions in place, and ensuring the presence of the police for crowd control and to duly facilitate the conduct of the assemblies.

63. Furthermore, the Court reiterates that in order to comply with the requirement of proportionality and to strike a fair balance between the competing interests at stake the authorities normally should, *inter alia*, consider less intrusive measures before refusing to authorise an assembly. Measures such as suggesting to the organisers that they change the place, date and/or time of an assembly, shorten its duration or limit the number of participants, could under certain circumstances be considered as more proportionate measures than an outright ban. However, in the present case, by simply refusing to authorise the assembly in application no. 69483/13 and by suggesting to the applicants in applications nos. 76319/13 and 30456/14

that they conduct the assemblies in the 20th residential area of the Sabail district, the BCEA failed to put forward less intrusive measures.

64. In regard of the latter the Court notes firstly that the location proposed by the BCEA to the applicants in applications nos. 76319/13 and 30456/14 was on the outskirts of Baku, and was a secluded place, being the grounds of a driving school (see paragraph 12 above). The fact that this left the organisers and the prospective participants of the assemblies in question with no choice but to gather away from the public eye, in an almost private setting, defeated the purpose of the peaceful public assembly planned. The Court reiterates that one of the aims of freedom of assembly is to secure a forum for public debate and the open expression of protest (see *Éva Molnár v. Hungary*, no. 10346/05, § 42, 7 October 2008). The protection of opinions and the freedom to express them is one of the objectives of the freedom of assembly enshrined in Article 11 (see, among many other authorities, *Freedom and Democracy Party (ÖZDEP)*, cited above, § 37).

65. The Court notes secondly that in application no. 30456/14, the planned location was crucial for the purpose of the assembly, since the demands that the participants intended to voice were related to, and addressed to, the Parliament. Holding the assembly in question on the grounds of a driving school located on the outskirts of Baku could not therefore be considered as an acceptable alternative. Nevertheless, the BCEA failed to take that issue into consideration. In addition, the domestic courts in their turn failed to address the applicant's important and pertinent arguments (see paragraph 23 above) in that regard.

66. In all three applications the authorities also failed to take into consideration the fact that the assemblies in question were planned by the applicants as members of a political group, the Public Chamber, and that the purpose of the assemblies was to protest against, manifest views on, and make demands about, various issues of a political nature which were in the public interest. A decision whether or not to authorise such assemblies should have been based on due recognition of the privileged protection under the Convention of political speech, debate on questions of public interest and the peaceful manifestation of opinions on such matters, and remained within the authorities' narrow margin of appreciation in restricting political speech (see, *mutatis mutandis*, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 133, 15 November 2018).

67. Consequently, the Court considers that the domestic authorities did not adduce "relevant and sufficient" reasons to justify the interference with the right to freedom of assembly of the applicants and failed to strike a fair balance between the competing interests at stake. The interference was therefore also disproportionate to any aim that could be legitimately pursued.

(d) Conclusion

68. In view of the above, the Court finds that the refusals to authorise the public assemblies did not appear to meet the lawfulness requirement of Article 11 and were not necessary in a democratic society.

69. There has accordingly been a violation of Article 11 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

70. The applicants complained under Article 6 of the Convention that they had not had a fair hearing in the proceedings they brought against the BCEA. They complained in particular that their right to a reasoned judgment had been violated. The relevant part of Article 6 § 1 of the Convention reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ..."

71. The Government contested the applicants' submissions. The applicants maintained their complaints.

72. Having regard to its findings in respect of Article 11 of the Convention above and the parties' submissions, the Court considers that there is no need to give a separate ruling on the admissibility and merits of the present complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicants claimed different amounts in respect of non-pecuniary damage, specifically as follows: 21,000 euros (EUR) (jointly in application no. 69483/13), EUR 16,000 (jointly in application no. 76319/13), and EUR 11,000 (in application no. 30456/14).

75. The Government submitted that the amounts claimed by the applicants in respect of non-pecuniary damage were unsubstantiated and that the sum of 2,500 Azerbaijani manats (AZN) to each applicant would constitute sufficient reparation in respect of any non-pecuniary damage allegedly suffered.

76. Ruling on an equitable basis, the Court awards the applicants EUR 4,500 in each application (in applications where there is more than one applicant, to all applicants jointly) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

77. The applicants also claimed EUR 5,300 per application for the costs and expenses incurred before the domestic courts and the Court.

78. In support of their claims, they submitted contracts signed by them and their representative, Mr R. Mustafazade. According to those contracts, the applicants had to pay AZN 5,300 (equivalent to approximately EUR 5,100 at the material time) per application to Mr R. Mustafazade for legal services, in the event that the Court awarded them compensation. The applicants in applications nos. 76319/13 and 30456/14 also submitted receipts according to which the first applicant in application no. 76319/13, Tofig Yagublu, had paid AZN 60 (equivalent to approximately EUR 55 at the material time) and the applicant in application no. 30456/14, Gulaga Aslanli, had paid AZN 75 (equivalent to approximately EUR 70 at the material time) for legal services provided by their other representative, Mr A. Mustafayev.

79. The Government submitted that the amounts claimed by the applicants were excessive and that the sum of AZN 3,000 to all the applicants jointly would constitute sufficient reimbursement. The Government also emphasised that the contracts signed by the applicants and their representative, Mr R. Mustafazade, indicated the sums due in Azerbaijani manats.

80. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 in each application (in applications where there is more than one applicant, to all applicants jointly), in respect of the legal services rendered by Mr R. Mustafazade, plus any tax that may be chargeable to the applicants, to be paid directly into the bank account of the applicants' representative. The Court also considers it reasonable to award the sum of EUR 55 to applicant Tofig Yagublu and EUR 70 to applicant Gulaga Aslanli in respect of the legal services rendered by Mr A. Mustafayev, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints under Articles 10 and 11 admissible;

3. *Holds* that there has been a violation of Article 11 of the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 10 of the Convention;

5. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 6 of the Convention;

6. *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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros) in each application (in applications where there is more than one applicant, to all applicants jointly), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros) in each application (in applications where there is more than one applicant, to all applicants jointly), plus any tax that may be chargeable to the applicants, in respect of the legal services rendered by Mr R. Mustafazade, to be paid directly into the bank account of this representative;
      (iii) EUR 55 (fifty-five euros) to the first applicant in application no. 76319/13, Tofig Yagublu, plus any tax that may be chargeable to the applicant, in respect of the legal services rendered by Mr A. Mustafayev;
      (iv) EUR 70 (seventy euros) to the applicant in application no. 30456/14, Gulaga Aslanli, plus any tax that may be chargeable to the applicant, in respect of the legal services rendered by Mr A. Mustafayev;
   (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;

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

Done in English, and notified in writing on 6 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	69483/13	Mustafa Hajili and Others v. Azerbaijan	17/09/2013	**Mustafa Mustafa oglu HAJILI** 1972 Baku Azerbaijani **Huseyn Bahadur oglu MALIKOV** 1962 Baku Azerbaijani **Rafig DASHDAMIROV** 1960 Baku Azerbaijani	Ruslan MUSTAFAZADE Asabali MUSTAFAYEV

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
2.	76319/13	Yagublu and Manafli v. Azerbaijan	25/10/2013	**Tofig Rashid oglu YAGUBLU** 1961 Baku Azerbaijani **Rafig MANAFLI** 1958 Baku Azerbaijani	Ruslan MUSTAFAZADE Asabali MUSTAFAYEV
3.	30456/14	Aslanli v. Azerbaijan	05/04/2014	**Gulaga Gulam oglu ASLANLI** 1952 Baku Azerbaijani	Ruslan MUSTAFAZADE Asabali MUSTAFAYEV