



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

FIRST SECTION

CASE OF AKSHIN GARAYEV v. AZERBAIJAN

(Application no. 30352/11)

JUDGMENT

Art 1 P1 • Control of the use of property • Excessive burden imposed on applicant as a result of continuing and lengthy retention of his property as physical evidence in criminal proceedings which remained suspended for more than twenty-five years

STRASBOURG

2 February 2023

FINAL

02/05/2023

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

In the case of Akshin Garayev v. Azerbaijan,

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Lətif Hüseynov,

Ivana Jelić,

Gilberto Felici, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 30352/11) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Azerbaijani national, Mr Akshin Gara oglu Garayev (*Akşin Qara oğlu Qarayev* – “the applicant”), on 2 May 2011;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints under Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 10 January 2023,

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

INTRODUCTION

1. The application, lodged under Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention, concerns the continuing and lengthy retention, as physical evidence in criminal proceedings, of property owned by a company fully owned by the applicant, allegedly in breach of his right to the peaceful enjoyment of his possessions, as well as the alleged absence of an effective domestic remedy in that regard.

THE FACTS

2. The applicant was born in 1953 and lives in Baku. The applicant was represented by Mr A. Mutallimov, Mr Z. Alakbarov and Mr J. Suleymanov, lawyers practising in Baku.

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

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

5. The applicant is the sole owner of Maksima, a company established in Azerbaijan in 1997.

6. In accordance with a decision of the Cabinet of Ministers of Azerbaijan of 24 March 1992, in May 1992 twenty-eight gas turbines which apparently belonged to the State were transferred for the purpose of sale to the State-owned Azermashavadanliq Union (an enterprise dealing with the machinery and equipment trade, owned by the then Ministry of Material Resources).

7. On 1 September 1992 the Prosecutor General's Office instituted criminal proceedings under Article 88-1 (embezzlement of State or public property in large amounts) of the old 1960 Criminal Code, as in force before 1 September 2000, in connection with alleged embezzlement by unspecified State officials of various unspecified State-owned goods which, at unspecified dates, were being transported by train to Armenia but had been unloaded at various train stations in Azerbaijan. While the decision on institution of criminal proceedings did not refer to specific goods, it appears from the subsequent case material that it was suspected that those goods included the twenty-eight gas turbines mentioned above. It is not clear whether, at the time of the institution of the criminal proceedings, the prosecuting authorities were aware that the twenty-eight gas turbines in question were in the possession of the Azermashavadanliq Union. It further appears that the investigation was assigned to a prosecutor of the Transport Prosecutor's Office.

8. In 1997 the Azermashavadanliq Union sold the turbines to a private company ("Company B"), apparently for a very low price (according to the Government, for the equivalent of approximately 25 United States dollars (USD)). Subsequently, pursuant to two separate sale and purchase contracts concluded in May 1997, Company B sold the twenty-eight turbines to Maksima, the company fully owned by the applicant, for a total price of 196,000,000 old Azerbaijani manats (AZM), which, according to the parties, was equivalent to approximately USD 50,000 at the time. It appears that, in the following months, Maksima took possession of six of the turbines, while the other twenty-two turbines remained physically at the Azermashavadanliq Union.

9. In the meantime, it appears that the prosecuting authorities took a number of investigative steps, such as questioning certain witnesses, including the applicant, and applying to various authorities, including foreign authorities, for information and legal assistance. In particular, it appears that they asked the Russian prosecuting authorities for information on the price of this type of gas turbine, which was produced in a plant located in Kaluga, Russia. They also asked the Ukrainian prosecuting authorities for assistance with questioning a key witness, affiliated with Company B, who was believed to be residing in Ukraine at the time.

10. On 26 August 1997 the prosecuting authorities seized the six turbines from Maksima. They also seized the other twenty-two turbines which now belonged to Maksima but still remained in the possession of the

Azermashavadanliq Union. According to the prosecuting authorities' records of 30 August and 3 September 1997, all twenty-eight turbines were given to one of the military units under the Ministry of Defence for safekeeping. The reasons why the turbines were given to this particular military unit are not entirely clear from the material in the case file.

11. Pursuant to a decision of the prosecutor of the Transport Prosecutor's Office of 31 December 1997, the twenty-eight gas turbines in question were recognised as physical evidence in the framework of the criminal proceedings instituted on 1 September 1992.

12. On the same day, 31 December 1997, the prosecutor from the Transport Prosecutor's Office issued a decision to suspend the criminal investigation because the prosecuting authorities had not received responses to a number of requests sent to various (including foreign) authorities and because it had not yet been possible to identify the person to be charged with the criminal offence.

13. In December 1999 Maksima lodged a civil claim against the Transport Prosecutor's Office, requesting the return of the turbines. By a judgment of 19 January 2000, the Nasimi District Court upheld the claim, finding that the criminal proceedings had been discontinued in 1997 and that therefore the turbines which had been retained as evidence now had to be returned to their owner. Following a protest lodged by the prosecutor's office, the Supreme Court quashed the first-instance court's judgment by a decision of 14 June 2000 and terminated the proceedings relating to Maksima's civil claim, finding that the first-instance court's conclusion was erroneous because the criminal proceedings had not been discontinued but were suspended and, as such, were still pending. In such circumstances, the question of returning physical evidence to its owner required a decision of the prosecuting authorities taken under the rules of criminal procedure.

14. It appears that in the meantime the criminal case had been transferred to the Prosecutor General's Office. It further appears that on various dates in 2001 the prosecuting authorities received responses to their requests from the Russian and Ukrainian authorities. In particular, the Russian authorities informed them that the price of the turbines could not be disclosed because it was a "State secret", while the Ukrainian authorities informed them that they had been unable to question the witness concerned because he had not been physically present at his home address and could not be found.

15. On 17 August 2002, having had regard to the above developments, the Prosecutor General's Office issued another decision to suspend the proceedings, given the continued inability to identify the person to be charged with the criminal offence.

16. In the meantime, it appears that, on an unspecified date, the Ministry of Material Resources was abolished and that ownership of the Azermashavadanliq Union was transferred to the Azerkontrakt Joint-Stock

Company. It further appears that in 2001 the Azermashavadanliq Union itself was transformed into an open joint-stock company and privatised.

17. On 8 July 2010 the applicant wrote to the Prosecutor General's Office, complaining about the lengthy retention of the gas turbines as evidence given that the proceedings remained suspended. He argued that this situation constituted a violation of his property rights under the Constitution and the Convention. He asked the prosecutor to consider whether the evidence could be returned to him pursuant to Article 129.4 of the Code of Criminal Procedure ("the CCrP") and/or whether the criminal proceedings could be discontinued under one of the grounds listed in Article 39 of the CCrP, in particular given the expiry of the criminal limitation period. On 7 September 2010 the Prosecutor General's Office responded that the criminal proceedings were pending and remained suspended and that, in those circumstances, it was not possible to return the gas turbines because they were held as evidence in proceedings. The question of returning the physical evidence would be decided upon the conclusion of the criminal proceedings.

18. It appears that, on an unspecified date, the applicant wrote another complaint to the Prosecutor General but did not receive a response.

19. On 26 October 2010 the applicant (on his own behalf, as "the founder of Maksima") lodged a complaint with the Nasimi District Court under the procedure provided by Article 449 of the CCrP for complaints against procedural acts and decisions of the prosecuting authority. In particular, he reiterated the submissions made in his letter of 8 July 2010 addressed to the Prosecutor General's Office (see paragraph 17 above). He complained that he had not received a response to his requests to consider the discontinuance of the criminal proceedings. He asked the court to quash the prosecuting authority's decision of 17 August 2002 suspending the criminal proceedings (see paragraph 15 above) and to order the prosecuting authorities to return the gas turbines to Maksima.

20. On 5 November 2010 the Nasimi District Court dismissed the applicant's complaint. Referring in particular to Articles 53.1.1, 53.6, 124.1, 128.1 and 129.4 of the CCrP, it noted that the decision to suspend the proceedings and the continued retention of the physical evidence were lawful. It further found that, since the gas turbines did not constitute physical evidence of a type listed in Article 131 of the CCrP, it was not possible to return them until the proceedings were concluded.

21. The applicant appealed. By a decision of 19 November 2010, the Baku Court of Appeal dismissed the applicant's appeal, essentially reiterating the first-instance court's reasoning, and explaining in addition that the question of what should be done with the physical evidence could be decided only by (a) a final court judgment in the criminal proceedings (as required by Articles 129.4 and 132 of the CCrP); (b) a decision of the prosecuting authority to discontinue the criminal proceedings (Articles 129.4 and 132 of the CCrP); or (c) a decision of the prosecuting authority or court, which could

be taken before the conclusion of the criminal proceedings only in situations listed in Article 131 of the CCrP. However, in the present case the proceedings, even if suspended, were still pending and had not been concluded, and there was no lawful basis on which to quash the decision to suspend the proceedings because the ground for such suspension (inability to identify the person to be charged with the criminal offence under Article 53.1.1 of the CCrP) had not ceased to exist (as required by Article 53.6 of the CCrP in order to resume the proceedings). In those circumstances, and since the evidence in issue was not of the type provided for in Article 131 of the CCrP, the question of returning the physical evidence to Maksima could not be decided before the proceedings were concluded.

22. As of the date of the latest communication with the parties, that is June 2019, the criminal proceedings remained suspended and the twenty-eight gas turbines continued to be retained as physical evidence.

RELEVANT LEGAL FRAMEWORK

23. Article 88-1 of the 1960 Criminal Code, in force before 1 September 2000, provided that large-scale embezzlement of State or public property was punishable by imprisonment for a term of ten to fifteen years with confiscation of the property.

24. Article 39 of the 2000 Code of Criminal Procedure (“the CCrP”) concerns circumstances which preclude criminal prosecution. In particular, a criminal prosecution cannot be brought, and where it has been brought it is to be discontinued (and criminal proceedings cannot be instituted, and where they have been instituted they are to be discontinued) in the case of, among other things, the absence of a criminal event, the absence of *corpus delicti* in the act committed, the expiry of the limitation period (with the exception of situations where limitation is suspended), the death of the accused (unless it is necessary to acquit the person), and so on.

25. Article 53 of the CCrP provides as follows:

“Article 53. Grounds for suspending the criminal prosecution

53.1. A criminal prosecution may be suspended in the following circumstances:

53.1.1. if the person to be charged with the criminal offence is unknown
[*təqsirləndirilən şəxs qismində cəlb edilməli olan şəxs müəyyən olunmadıqda*];

...

53.2. If a criminal prosecution is suspended, the criminal proceedings, simplified pre-trial proceedings or private prosecution proceedings shall also be suspended.

...

53.5. Before the prosecution is suspended, the authority conducting the criminal proceedings shall carry out all the procedural steps which are possible without the

person charged with the criminal offence, and in addition the investigator shall take all possible measures to identify and find the person who committed the offence.

53.6. The prosecution shall remain suspended until the grounds for suspending it are removed. Once these grounds cease to exist, the proceedings shall be resumed by a decision of the prosecutor, investigator or court.

53.7. Suspended proceedings in which the perpetrators of the criminal offence are identified shall be discontinued if the limitation period for prosecution has expired, except in cases where the person to be charged with a criminal offence is evading the investigating authority or the court, in cases of crimes punishable by life imprisonment and in cases of crimes against peace and humanity and war crimes.”

26. Article 124.1 of the CCrP provides that evidence (information, documents and other items) obtained by the court or the parties to criminal proceedings is to be considered as evidence in the prosecution. Such evidence must be obtained in accordance with the requirements of the CCrP and without restriction of constitutional rights and liberties, or with restrictions of such rights and liberties by means of a court decision, or on the basis of the investigator’s decision in such urgent cases as are provided for by the CCrP.

27. Under Article 128.1 of the CCrP, any item that can help determine circumstances of importance to the prosecution because of its characteristics, features, origin, place and time of discovery or the imprints it bears may be considered to be physical evidence. An item is considered physical evidence if the prosecuting authority so decides (Article 128.2).

28. Article 129.1 of the CCrP provides that, where possible, physical evidence must be packed and kept sealed in the case file. If it is of a large volume, it should be given for safekeeping to an organisation, institution or appropriate person, subject to their consent.

29. Article 129.4 provides that physical evidence and other items retained in the framework of a case must be kept by the prosecuting authority until the question of their final allocation is settled by a final decision of the court or by a decision of the prosecuting authority to discontinue the prosecution. A decision on the physical evidence may also be taken before the conclusion of the prosecution in other specific circumstances provided by the CCrP (see paragraph 30 below).

30. Pursuant to Article 131.1 of the CCrP, the prosecuting authority must return the following physical evidence either to the owner or to the lawful holder before the conclusion of the prosecution: perishable items, domestic items of daily necessity, domestic animals, birds and other animals which need daily care, and cars and other means of transport not retained to satisfy a civil or a property-related claim.

31. Article 132 of the CCrP, as in force before 9 July 2019, concerned decisions to be taken about physical evidence after the conclusion of a criminal prosecution. It provided that such decisions were to be taken by the criminal court in its judgment or by the prosecuting authority in its decision to discontinue proceedings. In particular, instruments used to commit a

criminal offence belonging to the convicted person and items which could not lawfully be used were to be confiscated and given to relevant organisations, or, if they had no value, destroyed. Other items of no value were to be destroyed or, at the request of interested persons, given to them. Any money or other valuable items removed from their owners as a result of a criminal offence were to be returned to their lawful owners or their successors. Any money or other valuable items constituting the proceeds of crime were to be put towards compensating for the damage caused by the criminal offence or, where the victim of the offence was unknown, transferred to the State. Documents recognised as physical evidence were to be kept in the criminal file for the term prescribed by law or given to interested persons. Article 132 of the CCrP, as amended on 9 July 2019, contains largely similar provisions, with various changes. In particular, among other things, it provides for cases and circumstances where the proceeds of crime can be confiscated as an alternative to being directed towards compensating for damages caused.

32. Article 133 provides for situations and procedures for payment of monetary compensation for value of items which have been damaged, destroyed or lost in the course of a forensic examination or other procedural steps.

33. Article 449 of the CCrP provides for a procedure for lodging complaints with a court against procedural acts or decisions of the prosecuting authority. In particular, under Article 449.3.5, a decision on suspension of a criminal prosecution can be challenged in the supervising court by interested persons.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

34. The applicant complained that the continuing and lengthy retention of property owned by a company fully owned by him as evidence in criminal proceedings was in breach of his right to the peaceful enjoyment of his possessions, as provided in 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. Admissibility

1. *Victim status*

35. The Court notes that the property in question, namely the twenty-eight gas turbines, was owned by Maksima, a company fully owned by the applicant. However, the present application was lodged by the applicant in his own name, and not on behalf of Maksima, and he complained of a violation of his, and not the company's, property rights. In such circumstances a question arises whether the applicant can claim to be a victim of the alleged violation. In particular, in order to be able to lodge an application in accordance with Article 34, an applicant must be able to show that he or she was "directly affected" by the measure complained of (see *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010, and *Lambert and Others v. France* [GC], no. 46043/14, § 89, ECHR 2015 (extracts)).

36. In the present case, the Government have not contested the applicant's victim status. However, this issue concerns a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 93, 27 June 2017).

37. The Court reiterates that as a general rule a shareholder of a company cannot claim to be a victim of an alleged violation of the company's rights under the Convention (see *Agrotexim and Others v. Greece*, 24 October 1995, §§ 59-72, Series A no. 330-A). The piercing of the "corporate veil" or the disregarding of a company's legal personality will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators (*ibid.*, § 66). However, the sole owner of a company can claim to be a "victim" within the meaning of Article 34 of the Convention in so far as the disputed measures taken with regard to his or her company are concerned, because in the case of a sole owner there is no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the existence and nature of infringements of the Convention rights or the most appropriate way of reacting to such infringements (see *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI, and *Albert and Others v. Hungary* [GC], no. 5294/14, §§ 135-37, 7 July 2020).

38. Turning to the present case, the Court notes that the first applicant is the sole owner of Maksima (see paragraph 5 above). In such circumstances, having regard to the absence of competing interests which could create difficulties, and in the light of the circumstances of the case as a whole, the Court considers that the applicant was so closely identified with the company fully owned by him that it would be artificial to distinguish between them in this context. Moreover, the Court notes that, in the relevant domestic

proceedings, the applicant himself was the complainant, and that his complaint was accepted and examined by the domestic courts (see paragraph 19 above). For these reasons, the Court considers that the applicant can claim to be a victim of the alleged violation within the meaning of Article 34 of the Convention (compare *Ankarcrona*, cited above; *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, no. 16163/90, § 21, 31 July 2003; *Jafarli and Others v. Azerbaijan*, no. 36079/06, §§ 38-41, 29 July 2010; and *Madžarović and Others v. Montenegro*, nos. 54839/17 and 71093/17, §§ 72-73, 5 May 2020).

2. *Compatibility* *ratione temporis*

39. The Government submitted that the complaint was incompatible *ratione temporis* with the provisions of the Convention, as the interference with the applicant's property rights had taken place before the Convention's entry into force in respect of Azerbaijan on 15 April 2002. They argued that the interference with the applicant's property rights had occurred in 1997. In particular, on 30 August and 3 September 1997 the gas turbines that had been seized by the prosecuting authorities had been transferred to the possession of a military unit for safekeeping (see paragraph 10 above) and on 31 December 1997 they had been recognised as physical evidence (see paragraph 11 above). The Government argued that the decision of 31 December 1997 constituted an "interference" and that that interference was an "instantaneous act" which had not produced a continuing situation. They argued that, while it was true that the applicant had challenged the decision to suspend the proceedings by way of a complaint under Article 449 of the CCRP (see paragraph 19 above) after the Convention's entry into force in respect of Azerbaijan, those proceedings had not brought the interference within the Court's temporal jurisdiction and had "only resulted in allowing the interference ... to subsist".

40. The applicant did not comment on this objection.

41. The Court reiterates that, in accordance with the general rules of international law, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that Party (see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III).

42. The Convention entered into force with respect to Azerbaijan on 15 April 2002. Accordingly, the Court is not competent to examine applications against Azerbaijan in so far as the alleged violation is based on facts which took place or situations which ceased to exist before that date. The Court therefore has to examine whether the facts on which the applicant's complaint is based are to be considered as instantaneous acts which occurred before that date and therefore fall outside its jurisdiction *ratione temporis* or whether, on the contrary, they are to be considered as creating a continuing

situation which still obtains, with the consequence that the Court has jurisdiction to examine the complaint in so far as it relates to the period starting from 15 April 2002.

43. According to the Court's case-law, deprivation of property is in principle an instantaneous act and does not produce a continuing situation of "deprivation" in respect of the rights concerned (see, *inter alia*, *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, and *Blečić*, cited above, § 86). One test applied by the Court in order to distinguish between an instantaneous act and a continuing situation is whether the applicant can still be regarded as the legal owner of the property or other right at issue (see *Chiragov and Others v. Armenia* (dec.) [GC], no. 13216/05, § 100, 14 December 2011, and *Sargsyan v. Azerbaijan* (dec.) [GC], no. 40167/06, § 87, 14 December 2011, with further references).

44. In the present case, it is undisputed that Maksima, the company fully owned by the applicant, is still the legal owner of the property in issue, namely the twenty-eight gas turbines. There has been no "deprivation of property" as such (see also paragraph 53 below). The situation complained of in the present case consists of the continued retention of the turbines, which still belong to Maksima, as physical evidence in the framework of the criminal proceedings which have remained suspended since 31 December 1997 and up to this date. Therefore, the applicant's inability to exercise his right to the peaceful enjoyment of his possessions is to be considered a continuing situation, which the Court has jurisdiction to examine in so far as the applicant's complaint relates to events occurring since 15 April 2002.

45. Moreover, even though, as noted above, a part of this complaint relates to events that occurred prior to 15 April 2002 and thus fall outside the Court's jurisdiction *ratione temporis* and cannot be directly examined by it, in view of the fact that the complaint as a whole concerns a situation of a continuing nature the Court considers that, in order to properly assess the state of affairs as they existed at the time of and following the Convention's entry into force with respect to Azerbaijan, it must, where necessary, take due account of the events that had taken place prior to that date (compare, *mutatis mutandis*, *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 107, 29 November 2007, and *Ismayilov v. Azerbaijan*, no. 4439/04, § 25, 17 January 2008).

46. Having regard to these considerations, the Court dismisses the respondent Government's objection *ratione temporis*.

3. Conclusion as to the admissibility

47. The Court further notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

48. The applicant submitted that the continued lengthy retention of the gas turbines as physical evidence was in breach of his right to peaceful enjoyment of his possessions, and in particular the requirement of proportionality. He noted that the rules of criminal procedure applicable before the entry into force of the new CCrP on 1 September 2000 allowed for the return of physical evidence to its owner before the completion of the proceedings, if this was possible without prejudicing the conduct of the proceedings. However, the new CCrP did not contain such a provision. Furthermore, under the new CCrP, the limitation period did not apply in a case which had been suspended because the perpetrator of a criminal offence could not be identified. At the same time, while the case remained suspended, no investigation was being carried out and no steps were being taken to identify the perpetrator. This could allow the current situation to last indefinitely.

49. The applicant also argued that his property was not being returned “for subjective reasons”. In particular, he stated (without submitting any evidence in that regard) that the gas turbines were no longer held by the military unit to which they had been given for safekeeping, because they had been unlawfully sold in the meantime by the custodians of the evidence, who had thus “plundered” his property. He argued that the Government’s submission that the turbines were kept in a safe place “did not correspond to reality”.

50. The Government submitted that the interference with the applicant’s property rights was “lawful” in accordance with Articles 53.1.1, 53.6, 53.7, 129, 131 and 132 of the CCrP, and pursued the legitimate aim of prevention of crime and ensuring the effectiveness of criminal proceedings. Lastly, they noted that the applicant’s property had not been “expropriated or confiscated” and that the turbines were kept in a safe place in one of the military units of the Ministry of Defence. They would be returned to the applicant “as soon as the perpetrator of the criminal offence was known”. For these reasons, the Government argued that the interference was necessary and complied with the requirement of proportionality.

2. *The Court’s assessment*

51. Article 1 of Protocol No. 1 guarantees in substance the right of property and comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of possessions. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.

The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the general principle laid down in the first rule (see, among other authorities, *AGOSI v. the United Kingdom*, 24 October 1986, § 48, Series A no. 108; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V; and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 62, ECHR 2007-I).

52. In view of its findings in paragraph 38 above, the Court reiterates that the twenty-eight gas turbines in question can be considered the applicant's "possessions" by virtue of his sole ownership of the company that owns them and in the absence of competing interests. It further notes that the complaint relates to the continued retention of the twenty-eight gas turbines as physical evidence in the criminal proceedings.

53. In this connection, the Court reiterates that various forms of seizure of property for legal proceedings normally relate to control of the use of property, which falls within the ambit of the second paragraph of Article 1 of Protocol No. 1 to the Convention (see, among other authorities, *Karamitrov and Others v. Bulgaria*, no. 53321/99, § 72, 10 January 2008; *Borzhonov v. Russia*, no. 18274/04, § 57, 22 January 2009; *Patrikova v. Bulgaria*, no. 71835/01, § 98, 4 March 2010; and *Lachikhina v. Russia*, no. 38783/07, § 58, 10 October 2017). In the present case, as noted above, the retention of the turbines as evidence did not deprive the applicant of his possessions but constitutes a measure provisionally preventing their use and disposal. The Court cannot but note the applicant's assertion that the turbines may no longer be available (see paragraph 49 above), which may be why they have not been returned to him to date. However, having regard to the established facts and verifiable information in its possession, it will examine the applicant's complaint with reference to the second paragraph of Article 1 of Protocol No. 1.

54. Since the retention of the applicant's property as evidence constitutes a measure which temporarily restricts the use and disposal of the property, the measure must be provided for by domestic law, pursue a legitimate aim and be proportionate to the aim pursued.

55. As regards the period starting from 15 April 2002, which falls within the Court's jurisdiction *ratione temporis*, nothing in the parties' submissions discloses that the interference was not lawful. The Court therefore accepts that the interference was based on the relevant provisions of Articles 53, 129, 131 and 132 of the CCrP. The Court also accepts that it pursued the legitimate aim of ensuring the proper functioning of justice and that it was therefore in the "general interest" of the community (see, *mutatis mutandis*, *Georgi Atanasov v. Bulgaria*, no. 5359/04, § 30, 7 October 2010; *Lachikhina*, cited above, § 60; and *Călin v. Romania*, no. 54491/14, § 73, 5 April 2022).

56. The Court observes, however, that there must also be a reasonable relationship of proportionality between the means employed and the aim

sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Borzhonov*, cited above, § 59). In order to determine the proportionality of the measure in question, it is necessary to take into account its duration, as well as its necessity in view of the progress of the criminal proceedings, the consequences of its application for the person concerned and the decisions taken by the authorities in that regard (see *Georgi Atanasov*, cited above, § 30; *Lachikhina*, cited above, § 59; and *Pendov v. Bulgaria*, no. 44229/11, § 44, 26 March 2020).

57. The Court notes that the property in question was seized from the applicant in August 1997 and formally recognised as physical evidence on 31 December 1997. On the same date the proceedings were suspended owing to the inability to identify the person to be charged with a criminal offence on the basis of the evidence available in the prosecuting authorities' case file. Another decision suspending the proceedings was taken on 17 August 2002, following receipt by the prosecuting authorities of some replies to the requests they had sent before the initial suspension of the proceedings, which replies did not materially change the situation. As a result, the proceedings had remained suspended for around twenty-five years.

58. The Court further notes that, as it follows from Article 53.7 of the CCrP, the proceedings which were suspended on the ground that the person to be charged with the criminal offence could not be identified could not be discontinued on the ground of the expiry of the limitation period. Furthermore, it appears that in accordance with Article 53.2 of the CCrP, during the period when the proceedings were suspended, the investigative authorities also suspended the investigation and did not take any active investigative steps. Indeed, the material available in the case file demonstrates that, from 15 April 2002 onwards, only one decision (the second decision on suspension of the proceedings, that of 17 August 2002) was taken by the prosecuting authorities in the framework of the criminal case. During this entire period the proceedings remained inactive, and no investigative steps or procedural decisions were taken by the investigating authorities in order to advance the investigation in the case. Article 53.6 of the CCrP, however, provided that suspended proceedings could not be resumed until the grounds for suspending them ceased to exist.

59. The Court cannot but note that, in such a situation, the proceedings could theoretically remain suspended indefinitely and never be discontinued, unless the person to be charged identified himself or herself to the prosecuting authorities on his or her own initiative or unless some other evidence became available to the prosecuting authorities that would enable them to identify such person.

60. Moreover, having regard to the domestic courts' reasoning (see paragraphs 20-21 above), the Court notes that, in a situation such as that obtaining in the applicant's case, the physical evidence retained by the prosecuting authorities in the framework of suspended proceedings cannot be returned to its owner until the completion or discontinuance of the criminal proceedings. However, the discontinuance of those proceedings has not been possible because they remain suspended and, as noted above, could remain suspended indefinitely. Accordingly, this also means that in a case such as the present one, physical evidence could be retained indefinitely.

61. Furthermore, in his complaint lodged with the courts under the procedure provided for by Article 449 of the CCrP, the applicant requested that the authorities or courts find grounds for discontinuing the proceedings. The courts limited themselves to reiterating that the proceedings could not be resumed in the circumstances and that therefore the evidence could not be returned because the proceedings were still pending.

62. As to the necessity of the measure, the Court notes that the case material relating to the period before the suspension of the proceedings on 31 December 1997, in particular the decision of that date to recognise the gas turbines as physical evidence, did not clearly specify why the turbines were considered of importance to the case as physical evidence. It could be that the prosecuting authorities' intention might have been to decide at a later stage, with further progress in the investigation, whether it was necessary to make specific orders about the property in question for the purpose of securing any future claims for damages or enabling confiscation measures. However, no such orders were ever made. None of the decisions taken in the period after the suspension of the proceedings provided any more clarification as to the actual necessity of the original decision to retain the turbines as evidence. Moreover, at no point was there any subsequent reassessment of the necessity of the retention despite the prolonged inactivity of the investigation, although it appears that the CCrP did not contain any provisions expressly allowing the courts or prosecuting authorities to carry out such a reassessment. It also appears, therefore, that once something has been recognised as physical evidence, that evidence has to be retained until the conclusion of the proceedings, with the exceptions not relevant to the present case (see paragraphs 21 and 30 above).

63. The Court further notes that, at the relevant time, the gas turbines had considerable financial value and that Maksima appears to have paid a relatively large amount of money to buy them (see paragraph 8 above). It would therefore appear that the retention of the turbines and the applicant's inability to use or to dispose of them has represented a considerable financial burden on the applicant.

64. Taking into account the fact that the criminal proceedings remained suspended since 31 December 1997 with no active investigative steps undertaken during the period since that date and no opportunity available

under domestic law to reassess the continued necessity of the retention of the physical evidence in view of the lengthy inactivity of the investigation, and also taking into account the resulting sheer length of the retention of the applicant's property – more than twenty-five years, of which more than twenty years fall within the period after the Convention's entry into force in respect of Azerbaijan (compare, *mutatis mutandis*, *Forminster Enterprises Limited v. the Czech Republic*, no. 38238/04, § 77, 9 October 2008) – as well as the considerable value of that property, the Court finds that a fair balance has not been struck in the present case between the general interests of society and the interests of the applicant, as he has been obliged to bear an excessive burden as a result of the continuing retention of his property as evidence.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

66. The applicant complained that he did not have access to an effective domestic remedy in respect of his complaint under Article 1 of Protocol No. 1 to the Convention, as provided in Article 13 of the Convention.

67. Having regard to the conclusions reached above under Article 1 of Protocol No. 1 to the Convention (see paragraphs 64-65 above) and the parties' submissions, the Court considers that there is no need to give a separate ruling on the admissibility and merits of this complaint in the present case (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage. In particular, he claimed EUR 50,000 for the value (“minimal market cost”) of the turbines, arguing that it would be impossible to return them since they had actually been illegally sold. He also claimed EUR 50,000 for loss of profit, arguing that, if he had been given his property back in a timely manner, sold it and placed the proceeds in a bank, he would have received that amount in interest on his capital.

70. The Government submitted that the applicant could not claim the value of the property which still belonged to him, since there had been no deprivation of ownership in the present case. As for the claim in respect of loss of profit, they argued that the claim was unsubstantiated.

71. As regards the part of the claim in respect of the value of the property, the Court does not discern any causal link between the violation found and the pecuniary damage alleged. As noted above, the measure complained of in the present case did not amount to a deprivation of property but to a temporary restriction of the right of use and disposal of the property, which still remains the applicant's property. The original complaint lodged with the Court did not relate to any illegal sale of the turbines and, in any event, there is no evidence in the case file that any such illegal sale has taken place. For these reasons, the Court rejects this part of the claim.

72. As regards the part of the claim in respect of loss of profit, the Court notes that, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part. It further notes that the applicant did not submit any particulars of this claim, any calculations or any evidence in support of it. It therefore also rejects this part of the claim.

73. However, the Court reiterates that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences (see *Borzonov*, cited above, § 69, with further references). Therefore, having regard to the nature of the violation found, the Court finds it appropriate to require the respondent State to ensure, by appropriate means and without undue delay, that the twenty-eight gas turbines in question be returned to the applicant, and should such return be impossible on account of any damage, destruction or loss of the turbines in question that may have occurred in the meantime, to reimburse the value of those turbines in accordance, where appropriate, with the available domestic procedures for reimbursement of the value of damaged, destroyed or lost physical evidence, with the expenses of any necessary expert valuations to be borne by the respondent State.

2. *Non-pecuniary damage*

74. The applicant claimed EUR 50,000 in respect of non-pecuniary damage.

75. The Government submitted that the amount claimed was excessive.

76. Ruling on an equitable basis, the Court awards the applicant EUR 3,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

77. The applicant also claimed EUR 2,350 in respect of costs and expenses, including EUR 2,000 for legal fees incurred before the Court, EUR 100 for “the cost of notarial fees and court registration fees”, and EUR 250 for “the cost of postal services and communication services”.

78. The Government submitted that the applicant had not substantiated his claim in respect of legal fees by itemising the particulars of the claim or submitting sufficient and relevant evidence. They also submitted that the remainder of the claims had not been duly substantiated with relevant evidence either. Lastly, the Government considered that an award of a total amount of EUR 1,000 for costs and expenses under all heads would be reasonable.

79. 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 1,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State shall ensure, by appropriate means and without undue delay, that the twenty-eight gas turbines in question be returned, in unchanged condition, to the applicant or, should such return be impossible on account of any damage, destruction or loss of the turbines that may have occurred in the meantime, that their value be reimbursed to the applicant in accordance with the relevant and available domestic procedures;
 - (b) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be

converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (c) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Marko Bošnjak
President