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

# THIRD SECTION

# DECISION

Application no. 45751/14
Rafiga Isa gizi AFANDIYEVA
against Azerbaijan

The European Court of Human Rights (Third Section), sitting on 21 January 2025 as a Committee composed of:

Darian Pavli*, President*,
Lətif Hüseynov,
Úna Ní Raifeartaigh*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 45751/14) 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") on 20 May 2014 by an Azerbaijani national, Ms Rafiga Isa gizi Afandiyeva (*Rəfiqə İsa qızı Əfəndiyeva* – "the applicant"), who was born in 1941, lived in Baku and was represented by Mr S. Bagirov, a lawyer based in Azerbaijan;

the decision to give notice of the application to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov;

the information about the applicant's death on 24 July 2015 and the wish of her son, Mr Veysal Afandiyev, to continue the proceedings before the Court in her stead;

the parties' observations;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The present case concerns the allegedly unlawful expropriation of the applicant's property and the alleged unfairness of the related civil proceedings.

2. The applicant lived at no. 64, Third Alatava street, Nasimi district, Baku. She did not possess an ownership certificate for the house, which was an unauthorised construction. A "technical passport" was issued in respect of

the house in 1997, stating that it had a surface area of 69.8 sq. m and that the surface area of the underlying plot of land was 172.6 sq. m. According to the applicant, she had later carried out additional construction work, which increased the surface area of the house to 146.87 sq. m.

3. By an order by the Head of the Baku City Executive Authority of 26 April 2011, the area surrounding J. Salimov Street in the Nasimi district of Baku was designated for the construction of a new underground station. The applicant's house was located within this area.

4. In January 2013 the applicant was informed by the Baku underground ("the Baku Metro") that her house was located within the area designated for the construction of the new underground station, and that it would therefore be demolished. She was offered compensation for the house and asked to vacate it within seven days.

5. On 22 February 2013 the applicant lodged a claim with Baku Administrative-Economic Court no. 1 against the Baku Metro, claiming compensation in the amount of 220,305 Azerbaijani manats (AZN) for the house (146.87 sq. m), AZN 258,900 for the underlying plot of land (172.6 sq. m) and AZN 200,000 for lost profit.

6. On 8 April 2013 the applicant received AZN 117,301 (approximately 115,000 euros (EUR) at the relevant time) from the Baku Metro in compensation for the house. That amount consisted of compensation for the house itself (the surface area of which was determined to be 146.87 sq. m) and an additional 20% compensation, in accordance with Presidential Decree no. 689 of 26 December 2007. The applicant later received an additional AZN 24,100 (approximately EUR 23,600) for unspecified reasons.

7. On 22 April 2013 the applicant partly amended her initial claim before the first-instance court, stating that she no longer wished to pursue the part concerning compensation for the expropriation of the house, as she had been compensated for it. However, she sought AZN 200,000 in respect of non-pecuniary damage for the allegedly unlawful demolition of a fence.

8. By judgment of 8 May 2013 Baku Administrative-Economic Court no. 1 dismissed the applicant's amended claim. That judgment was subsequently upheld on 30 July 2013 and 13 December 2013 by the Baku Court of Appeal and the Supreme Court respectively. In particular, the domestic courts found that as the applicant had had no registered ownership rights over the plot of land in question, she could not claim any compensation for the expropriation of the land or of the garden. They further held that since the parties had reached an agreement concerning compensation for the house, there was no outstanding dispute in that regard. As to the "technical passport", the courts noted that it indicated only the surface area of the house and land, but did not confer on the applicant any ownership rights over them.

9. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention that she had been deprived of her property, in breach of domestic law, and that the domestic courts'

decisions in that respect had not been reasoned. In particular, she submitted that she was entitled to receive compensation for the plot of land underlying the house, and that the amount of compensation that she had received for the house was inadequate.

## THE COURT'S ASSESSMENT

### A. Preliminary issue

10. The Court notes at the outset that the applicant died after lodging the application and that her son, Mr Veysal Afandiyev, has expressed his wish to continue the proceedings before the Court. It has not been disputed that the applicant's son is entitled to pursue the application on her behalf and the Court sees no reason to hold otherwise. Having regard to its case-law on the matter (see, for example, *Mammadov and Others v. Azerbaijan*, no. 35432/07, § 80, 21 February 2019, with further references), the Court therefore accepts that the applicant's son has a legitimate interest to pursue the application in the late applicant's stead. However, for reasons of convenience, the text of this decision will continue to refer to Ms Rafiga Afandiyeva as "the applicant", even though her son is today to be regarded as having the status of applicant before the Court (see *Isayeva v. Azerbaijan*, no. 36229/11, § 62, 25 June 2015, and *Fariz Ahmadov v. Azerbaijan*, no. 40321/07, § 38, 14 January 2021).

### B. Complaints

11. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), will examine the complaints solely under Article 1 of Protocol No. 1 to the Convention.

12. The Government submitted that the applicant did not possess any title to the house or the plot of land underlying it. The applicant disagreed, arguing, in particular, that she had a "legitimate expectation" to ownership of the plot of land.

13. The Court's case-law on the concept of "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention has been summarised, *inter alia*, in *Akhverdiyev v. Azerbaijan* (no. 76254/11, § 73, 29 January 2015), and *Aliyeva and Others v. Azerbaijan* (nos. 66249/16 and 6 others, §§ 102-04, 21 September 2021, with further references).

14. Turning to the circumstances of the present case, the Court notes that the applicant never formally registered any ownership rights over the house and the land in question and has been unable to produce any documentary evidence in support of her claim. In that regard, the Court notes that a person holding a "technical passport" in respect of a building could apply to have his

or her ownership right over that building recorded in a register of immovable property, provided that all the other documents submitted at the same time were also in order (see *Aykhan Akhundov v. Azerbaijan*, no. 43467/06, § 99, 1 June 2023). The applicant in the present case did not demonstrate that she had lodged such an application with the relevant authorities, nor did she provide any explanation for her failure to do so (compare *Guliyeva v. Azerbaijan* [Committee], no. 51424/08, § 46, 23 September 2021).

15. Moreover, the Court observes that the applicant received compensation for the loss of the house from the Baku Metro while her claim was still pending before Baku Administrative-Economic Court no. 1. For that reason, the domestic courts did not award her any compensation, but merely noted in their judgments that the parties had reached an agreement on that point (see paragraphs 6 and 8 above). Thus, at no point in the present case did the domestic courts recognise that, even in the absence of the relevant documents, the applicant had a proprietary interest in the house or in the land plot (contrast *Rahimov v. Azerbaijan* [Committee] (dec.), no. 40026/09, § 18, 7 July 2022).

16. The Court does not lose sight of the fact that the applicant's house was an unauthorised construction (see paragraph 2 above). In this respect, the Court notes that under Azerbaijani law, unauthorised constructions cannot form the subject of property rights (see *Ahmadova v. Azerbaijan*, no. 9437/12, §§ 14 and 29, 18 November 2021, and *Alif Ahmadov and Others v. Azerbaijan*, no. 22619/14, §§ 23 and 36, 4 May 2023).

17. In such circumstances, and in the absence of any substantiated arguments, it cannot be established that the house in question constituted the applicant's "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

18. As to the applicant's claim concerning the plot of land in question, the Court notes that, under domestic law as applicable at the relevant time, a "lawful user" of immovable property (such "right of use" arising by virtue of having registered private ownership over that immovable property) located on State-owned land was entitled to have the land transferred into his or her ownership free of charge, and that this right gave rise to a "legitimate expectation" of acquiring ownership over the land (see *Akhverdiyev*, cited above, §§ 56-58 and 74-77). In the present case, however, as stated above, the applicant never registered her ownership rights over the house; thus, at the time of its demolition, it was not formally in her "private ownership" within the meaning of domestic law. In such circumstances, prior to the demolition of the house, the applicant had no legally exercisable right to have any part of the land underlying the house transferred into her ownership. The Court reiterates in this respect that a conditional claim which lapses as a result of the non-fulfilment of the condition cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Aliyeva and Others*, cited above, §§ 104 and 113). Accordingly, it has not been demonstrated in

the present case that the applicant ever acquired a "legitimate expectation" to ownership of the land in question (compare *Rahimov*, cited above, § 15).

19. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

*Holds* that the applicant's son, Mr Veysal Afandiyev, has standing to continue the present proceedings in the deceased applicant's stead;

*Declares* the application inadmissible.

Done in English and notified in writing on 13 February 2025.

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| Olga Chernishova<br>Deputy Registrar | Darian Pavli<br>President |