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

FIRST SECTION

DECISION

Application no. 66400/12
Eyvaz AGAYEV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 2 July 2024 as a Committee composed of:

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 66400/12) 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 2 October 2012 by an Azerbaijani national, Mr Eyvaz Malik oglu Agayev (*Eyvaz Malik oğlu Ağayev* – "the applicant"), who was born in 1969 and lives in Baku, and was represented by Mr Y. Agazade, a lawyer practising in Azerbaijan;

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

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the allegedly unlawful demolition of two unfinished buildings erected by the applicant for business purposes in the Saatli district of Azerbaijan.

2. The applicant was engaged in small-scale entrepreneurial activity in the Saatli district. In his submission, he had registered all of his business activities under the names of his close relatives since he was a citizen of the Russian Federation. On an unspecified date in 2009 he erected a three-storey building ("the first building"), without planning permission, on a plot of land that had been allocated by the local executive authority to a third party, who, in turn,

allegedly transferred it to a member of the applicant's family on the basis of a power of attorney. However, the applicant provided no evidence of such a transfer of rights, before either the domestic courts or the Court. In August 2009 the building was purportedly demolished on the instruction of the head of the Saatli District Executive Authority ("the SDEA").

3. According to the applicant, sometime after the demolition of the first building, he erected another building ("the second building"), again without obtaining planning permission, on another plot of land that he had allegedly purchased from another third party. The applicant did not submit any supporting document confirming the purchase of that plot of land. In November 2010 the representatives of the SDEA, acting on the instruction of the head of the SDEA, purportedly demolished the second building too.

4. On 18 January 2011 the applicant brought proceedings against the SDEA before the Shirvan Administrative-Economic Court, seeking an award of 30,000 Azerbaijani manats (AZN) as compensation in respect of non-pecuniary damage for the demolition of the first building, and AZN 15,000 and AZN 25,000 in respect of pecuniary and non-pecuniary damage for the demolition of the second building. He also asked the court to declare unlawful the demolition of the aforementioned buildings without a court decision. In support of his claim, he presented several photographs, showing two buildings before and after demolition.

5. On 1 August 2011 the Shirvan Administrative-Economic Court dismissed the applicant's claim. At the hearing before the first-instance court, the applicant's representative acknowledged that the applicant had no title to the plots of land and the buildings constructed on them, which had been erected without any form of planning permission. The applicant's main argument was that the mere fact of illegal construction could not serve as justification for demolishing the buildings without a court order.

6. The first-instance court held that the existence of the disputed buildings, and their demolition by the respondent, could not be established. It found that the photographs could not be accepted as reliable evidence in that regard. The court further held that, even assuming that the buildings in question had existed, the applicant could not claim any compensation for their demolition as he had no legitimate property rights (the right to possess, use or dispose of them) under domestic law.

7. The applicant's appeals were dismissed by the Shirvan Court of Appeal and the Supreme Court on 27 December 2011 and 11 May 2012 respectively.

8. The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention that the demolition of the buildings in question by the State authorities had been unlawful, and that the domestic courts' decisions in his case had not been duly reasoned.

THE COURT'S ASSESSMENT

9. The Court, being master of the characterisation to be given in law to the facts of the case, will examine the complaints solely under Article 1 of Protocol No. 1 to the Convention.

10. The Government argued that the contested buildings had never existed and, even assuming that they had, the applicant had not acquired any property rights to them. The applicant reiterated his complaints.

11. The Court notes that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of this provision. "Possessions" can be "existing possessions" or claims that are sufficiently established to be regarded as "assets". The Court has also referred to claims in respect of which an applicant can argue that he or she has at least a "legitimate expectation" that they will be realised, that is, that he or she will obtain effective enjoyment of a property right. However, a legitimate expectation has no independent existence; it must be attached to a proprietary interest for which there is a sufficient legal basis in national law (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 142-43, 20 March 2018, and the cases cited therein).

12. The Court notes that under domestic law a residential building, construction, facility, or other immovable property erected on a plot of land not allocated for construction purposes or without obtaining the necessary permits or as a result of a serious breach of town-planning and building regulations was considered an unauthorised construction. The party that had erected an unauthorised construction could not acquire ownership rights to the construction in question and was not entitled to dispose of it by sale, deed of gift, lease or by any other means (see *Ahmadova v. Azerbaijan*, no. 9437/12, §§ 12-14, 18 November 2021).

13. In the present case, the domestic courts held that the existence of the buildings in dispute, and their alleged demolition by the local executive authority, had not been established, on the grounds of insufficient evidence. They also held that the applicant could not claim compensation even if he had built them, as he had had no authorisation to carry out construction work.

14. The Court observes that the parties are in dispute as regards the existence of the buildings in question (see paragraph 10 above). The Government also reiterated the domestic courts' conclusion that, even assuming that the buildings had existed, they could not have constituted the applicant's possessions. The Court agrees with the latter conclusion for the following reasons.

15. It is clear from the case file that the applicant claimed ownership rights over the buildings that he had erected, without the necessary planning permission, on plots of land to which he did not have title. The applicant himself did not contest these facts (see paragraph 5 above). The applicant

was – or should have been – aware that constructing buildings in the absence of the requisite legal documents, and without having obtained permission for that purpose, did not comply with the requirements of domestic law (compare *Orujova v. Azerbaijan* [Committee] (dec.), no. 1776/09, § 63, 17 June 2021).

16. Thus, the applicant had neither a "possession" under Article 1 of Protocol No. 1 nor a legitimate expectation under the relevant domestic law of obtaining recognition of his rights to such constructions (compare *Orujova*, cited above, § 64, and *Asadov v. Azerbaijan* [Committee] (dec.), nos. 64762/09 and 54136/12, § 27, 8 September 2022).

17. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 September 2024.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President