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

FIRST SECTION

DECISION

Application no. 12328/12
Yashar Vagif oglu AGAZADE
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 13 December 2022 as a Committee composed of:

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Ivana Jelić*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 12328/12) 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 9 August 2011 by an Azerbaijani national, Mr Yashar Vagif oglu Agazade ("the applicant"), who was born in 1979 and lives in Baku, and who was represented before the Court by Mr R. Hajili, a lawyer based in Strasbourg;

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 application, lodged by a journalist under Articles 6 and 10 of the Convention, concerns an alleged breach of his right of access to State-held information of public interest and his rights to a reasoned decision and access to a court.

2. In 2010 several regions of Azerbaijan suffered a natural disaster: large-scale flooding of the Kura and Aras Rivers. Properties belonging to a large number of residents were either destroyed or damaged.

3. By an order of 19 May 2010 the President created a special State commission to deal with the natural disaster ("the Commission"). The Commission had over twenty members, including various ministers, heads of various other State agencies and heads of various utility companies. The Prime Minister was appointed as its chairman. The Commission was instructed to implement complex measures with regard to rehabilitation of the affected regions, restoration of the regions' economies and settlements and payment of monetary compensation to the victims by the State. It was also instructed to ensure that the public was informed of the measures implemented.

4. On 27 July 2010 the applicant submitted an information request to the Commission and its chairman, the Prime Minister. While the copy of the request available in the case file does not indicate the address to which it was sent, according to the applicant it was sent to the Prime Minister's Office at the Cabinet of Ministers. The applicant requested information on, *inter alia*, the amounts of compensation to be paid to the victims, the measures implemented in connection with the funds allocated from the State budget for rehabilitation of the affected regions and copies of any relevant reports. He also asked for a list of decisions taken by central executive authorities in connection with the rehabilitation project.

5. The applicant received no response and lodged a claim with the Sabayil District Court, indicating the Commission as the defendant with the name of its chairman, the Prime Minister, in brackets. He asked the court to order the Commission to provide access to the requested information in accordance with the Law on Access to Information of 30 September 2005.

6. By a decision of 18 October 2010 the Sabayil District Court refused to examine the claim on the merits and returned it to the applicant, finding that the Commission had no capacity to act as a civil defendant. It noted that the Commission was a temporarily formed body whose members were a number of State officials but which did not have the status of a legal entity. As such, it could not act as a defendant in court proceedings in accordance with Articles 49.1 and 50.1 of the Code of Civil Procedure, which stated that parties to civil proceedings could be, *inter alia*, individuals and legal entities possessing civil legal capacity, as well as State authorities. Moreover, the court noted that the applicant had not even specified whether the Commission was still active. It further noted that, in accordance with Article 152.4 of the Code of Civil Procedure, the civil claim could be lodged again after the shortcomings serving as a basis for returning the claim had been eliminated.

7. The applicant appealed, arguing briefly that, under Articles 7 and 8.1.5 of the Law on State Service (which defined "State authorities" as entities implementing State functions, established in accordance with the Constitution and legislative acts, and funded from the State budget, and including, *inter alia*, relevant executive authorities, their local subdivisions, authorities subordinated to them, as well as the courts), the Commission

should be considered a "State authority" with the capacity to act as a defendant in civil courts in accordance with Article 50.1 of the Code of Civil Procedure. He also argued that, because he had included the Prime Minister's name in brackets, the claim should have been considered not only to have been lodged against the Commission, but also against the Prime Minister (as a State official) and the Cabinet of Ministers (as the Prime Minister's "office"). The applicant did not appear at the appellate hearing.

8. On 24 November 2010 the Baku Court of Appeal dismissed the applicant's appeal and upheld the first-instance court's inadmissibility decision, reiterating its reasoning and noting that the claim had not been lodged in accordance with the rules of civil procedure.

9. The applicant lodged a cassation appeal, reiterating his arguments. He did not appear at the cassation hearing. On 11 February 2011 the Supreme Court rejected his appeal and upheld the lower courts' decisions, reiterating their reasoning.

10. The applicant complained to the Court under Article 10 of the Convention that the Commission's failure to respond to his information request had amounted to a breach of his right of access to information of public interest. He further complained under Article 6 of the Convention that his rights to a reasoned decision and access to a court had been violated.

THE COURT'S ASSESSMENT

A. Article 10 of the Convention

11. The Government submitted that the Commission had not been a State authority and, as such, had neither been an "information owner" within the meaning of the Law on Access to Information nor could it act as a defendant in civil proceedings. Therefore, the applicant's information request had not been submitted to a relevant State body, nor could he be considered to have exhausted domestic remedies owing to his failure to lodge his civil claim in accordance with the rules of civil procedure. The applicant contested the Government's objections.

12. The Court reiterates that Article 10 of the Convention does not confer on the individual a right of access to information held by a public authority, nor does it oblige the State to impart such information to the individual. However, such a right or obligation may arise in certain circumstances. In order to determine whether Article 10 can be said to apply to a public authority's refusal to disclose information, the situation must be assessed in the light of the criteria established in the Court's case-law (see *Namazli v. Azerbaijan* (dec.), no. 28203/10, §§ 30-31, 7 June 2022, with further references to, among other authorities, *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 167-70, 8 November 2016). However, in the present case, the Court considers that it is not necessary to determine whether

Article 10 of the Convention is applicable because, even assuming that it is so, the complaint is in any event inadmissible for the following reasons.

13. Article 35 § 1 of the Convention requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014, with further references).

14. In the present case, the applicant lodged his civil claim against the Commission, which, according to the domestic courts' findings, was a body which did not possess a distinct legal personality, was not a legal entity and could not act as a defendant in civil proceedings. Furthermore, it appears that the courts did not accept the applicant's argument that it could act as a civil defendant because it was a State authority within the meaning of domestic law. For these reasons, the claim was not accepted for examination on the merits and the applicant was informed that he could lodge a new claim against the relevant defendant. Moreover, the Court cannot accept (and neither did the domestic courts) the applicant's argument that, because he had included the Prime Minister's name in brackets, the claim should have been considered not only to have been lodged against the Commission, but also against the Prime Minister and the Cabinet of Ministers. The copy of the claim available in the case file clearly indicates the Commission as the only defendant, albeit also including the name of its chairman in brackets.

15. The Court reiterates that its power to review compliance with domestic law is limited and it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection. 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). The Court finds no elements in the parties' submissions or the material in the case file demonstrating that the domestic courts' findings as to the claim's non-compliance with the requirements of the domestic law were arbitrary or manifestly unreasonable.

16. In this connection, the Court also refers to *Rovshan Hajiyev v. Azerbaijan* (nos. 19925/12 and 47532/13, 9 December 2021), a case similar to the present one, in which the applicant was represented before the Court by the same lawyer as the applicant in the present case, and which also

involved a State commission created by the President for a specific purpose, but with the Minister of Healthcare appointed as its chairman (ibid., § 7). In that case, the applicant had submitted his information requests not to the commission as such, but to the Ministry of Healthcare and, subsequently, to the Cabinet of Ministers (ibid., §§ 9 and 17). Having not received a complete response or any response at all from those authorities, he then lodged separate civil claims against each of those authorities, both of which clearly qualified as "State authorities" within the meaning of the domestic law and could therefore act as defendants in civil courts. His claims against both of those authorities were accepted and examined on the merits by the domestic courts (ibid., §§ 12-16 and 19-24). In the present case, however, the applicant has failed to explain what prevented him from lodging a new civil claim (and, as might have been appropriate, a new information request) against the relevant State authority whose officials had been appointed as members of the Commission.

17. Having regard to the above circumstances, the Court considers that the present complaint was not raised before the domestic courts in compliance with domestic law and that the applicant has not provided any reasons as to why he did not attempt to direct his claim against a relevant authority which had the capacity to act as a defendant in civil proceedings in respect of his complaint concerning his right of access to State-held information.

18. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Article 6 of the Convention

19. The applicant argued under Article 6 of the Convention that the courts had unlawfully refused to examine his claim on the merits and had not responded to his legal argument that the Commission was a State authority competent to act as a defendant in civil courts.

20. The Court refers to its reasoning above (see paragraphs 14-17 above), which is also pertinent in respect of this complaint. It further notes that, while it is true that the applicant's argument that the Commission was a State authority did not receive a very detailed or eloquent response from the domestic courts, the reasoning provided was sufficient to substantiate the courts' decisions that the Commission was neither a State authority nor a legal entity. In the circumstances of this case, no arbitrariness can be detected in the domestic courts' decisions. Lastly, as noted above (see paragraphs 6 and 16 above), it was open to the applicant to lodge a new claim against the relevant State authority.

21. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2023.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President