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

FIFTH SECTION

DECISION

Applications nos. 64762/09 and 54136/12
Mubariz Varis oglu ASADOV
against Azerbaijan

The European Court of Human Rights (Fifth Section), sitting on 8 September 2022 as a Committee composed of:

Arnfinn Bårdsen*, President,*
Kateřina Šimáčková*,*
Mykola Gnatovskyy*, judges,*
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

two applications against Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the applicant, Mr Mubariz Varis oglu Asadov, on 30 November 2009 and 10 August 2012 respectively;

the decision to give notice of the complaints under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention to the Azerbaijani Government ("the Government") represented by their Agent, Mr Ç. Əsgərov, and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applications mainly concern complaints under Article 1 of Protocol No. 1 to the Convention and Articles 6 and 13 of the Convention about the allegedly unlawful demolition of the applicant's petrol station, then under construction, and the allegedly unlawful interference with his property rights in respect of the plot of land on which it was being constructed.

A. Application No. 64762/09

2. On 18 April 2001 the Gabala Municipality issued a decision to sell to the applicant a plot of land of 0.10 ha for the construction of a petrol station. On 7 January 2002 the Gabala District Department of the State Land and Cartography Committee ("the SLCC") issued a title deed to the applicant.

3. On 24 May 2004 the municipality, having regard to (i) the renovation work carried out in the street where the plot of land was situated; (ii) its unsuitability for the construction of a petrol station; and (iii) the applicant's written request, decided to allocate him another plot of land of the same size instead of the previous one. The decision stated that the applicant had to ensure the amendment of the title deed owing to the change of the plot of land.

4. On 2 June 2004 the Gabala District Executive Authority ("the GDEA") issued an order allowing the applicant to carry out construction of the petrol station on the newly allocated plot of land on the basis of the municipality's decision of 24 May 2004 and the schematic plan of the new plot of land.

5. On 13 August 2006, employees of the State Agency for Control over Construction Safety of the Ministry of Emergency Situations ("the Agency") examined the construction carried out by the applicant and drew up a report finding that the building had been erected without, *inter alia,* the relevant construction project approval having been obtained or the requisite geological exploration work having been conducted.

6. According to the applicant, the construction of the petrol station had been completed in August 2006 with only asphalt paving work remaining.

7. Following a letter of 16 August 2006 from the Agency sharing its above-mentioned findings (see paragraph 5 above), on 21 August 2006 the GDEA revoked its order of 2 June 2004.

8. On an unspecified date the Architecture and Construction Department of the GDEA brought proceedings against the applicant and asked the domestic courts to declare the unfinished building of the petrol station an unauthorised construction and to order its demolition.

9. On 18 April 2008 the Gabala District Court allowed that claim. Referring, *inter alia*, to the State Construction Norms of 1 January 2000, the court held that the applicant had failed to obtain a construction project approved by a State expert examination and to carry out geological exploration work in the area. It decided that the building was an unauthorised construction within the meaning of Article 180 of the Civil Code and ordered its demolition.

10. The applicant appealed, arguing mainly that he had a title deed for the plot of land on which the construction had been carried out and that he had started the construction work after the GDEA's order of 2 June 2004.

11. On 19 November 2008 the Shaki Court of Appeal dismissed the applicant's appeal, reiterating the first-instance court's reasoning.

12. According to the applicant, the building was demolished by bailiffs on 14 January 2009 and he did not have access to the plot of land after that date.

13. On 20 April 2009 the Supreme Court dismissed the applicant's cassation appeal.

B. Application No. 54136/12

14. On 29 May 2009 the applicant brought proceedings against Azerenerji OJSC ("Azerenerji"). He argued that Azerenerji had unlawfully erected an electric power line over the plot of land which was in his ownership under the title deed of 7 January 2002 (see paragraph 2 above). He asked that court to order Azerenerji to remove the power line from his plot of land and to award him damages.

15. On 10 June 2010 the Gabala District Court partly allowed the claim. Referring to the municipality's decision of 18 April 2001 and the title deed of 7 January 2002, it held that Azerenerji had unlawfully run a power line above the applicant's plot of land. It dismissed the applicant's claims for damages as unsubstantiated.

16. Following an appeal by both parties, on 1 July 2011 the Shaki Court of Appeal overturned the first-instance court's judgment. Relying on a specialist opinion of the SLCC, the court found that the title deed in question was valid but concerned another plot of land (according to the case file the plot of land sold to the applicant under the municipality's decision of 18 April 2001) and not the land over which the power line was run. It further noted that even though the applicant had referred to the municipality's decision of 24 May 2004 and the schematic plan of the changed plot of land in his appeal, he had failed to obtain a title deed for that land. Thus, the court concluded that the applicant did not have any rights over the plot of land in question and could not contest Azerenerji's actions.

17. The applicant lodged a cassation appeal, arguing mainly that the plot of land in question was in his ownership and that, after the change of the plots of land, the relevant amendment had been made to the title deed.

18. By a judgment of 10 January 2012 (notified to the applicant on 10 February 2012) the Supreme Court dismissed the applicant's cassation appeal.

JOINDER OF THE APPLICATIONS

19. Having regard to the intertwined subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

THE COURT'S ASSESSMENT

A. Complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention

20. In both applications, the applicant complained under Article 6 of the Convention that the domestic courts had, in his cases, delivered judgments which lacked reasoning. He further complained under Article 1 of Protocol No. 1 to the Convention that there had been an unlawful interference with his property rights.

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

22. The Government argued that the applicant did not have "possessions" within the meaning of Article 1 of Protocol No. 1. The applicant contested that argument and alleged that the domestic courts' conclusions based on the absence of a title deed had been contrary to the provisions of domestic law and, in particular, to the decision of the Plenum of the Supreme Court of 15 January 2010, which had provided, *inter alia*, that while State registration was required for acquiring ownership rights over immovable property and for the protection of such rights by the State (see *Orujova v. Azerbaijan* (dec.), no. 1776/09, §§ 36-38, 17 June 2021), this did not exclude a person's right to possess and to use property acquired in accordance with domestic law.

1. As regards the plot of land

23. The Court firstly observes that the applicant did not raise the above-mentioned argument (see paragraph 22 above) in his initial claim nor in his cassation appeal, nor did he refer to the decision of the Plenum of the Supreme Court of 15 January 2010 (compare, *mutatis mutandis*, *Zentas Loginas Muzejs v. Latvia* (dec.), no. 32066/06, § 79, 13 December 2016). According to the case file, the applicant's main argument in the domestic proceedings was that there had been an interference with his property right in respect of the plot of land which was in his ownership under the title deed of 7 January 2002. The domestic courts established that the title deed in question was valid but did not concern the plot of land over which the electric power line was erected. They held that, despite the municipality's decision of 24 May 2004 and the schematic plan of the new plot of land, the applicant had not obtained a title deed for that plot of land as required under domestic law and therefore did not have any ownership rights in respect of it (see paragraphs 16 and 18 above).

24. The municipality, in its decision of 24 May 2004, had clearly instructed the applicant to ensure the amendment of the title deed owing to the change of the plot of land (see paragraph 3 above) and it appears that he failed to take the relevant steps in this regard (compare *Sevastre v. Romania*

(dec.), no. 26485/11, § 33, 11 February 2020). While the applicant insisted that the relevant amendment following the change of the plot of land had been made to the title deed (see paragraphs 10, 14 and 17 above), he failed to provide any documentary proof of this either before the domestic courts or before the Court.

25. In such circumstances, the applicant did not have an existing possession or a claim constituting an asset within the meaning of Article 1 of Protocol No. 1 to the Convention (compare *Çakar v. Turkey* (dec.), no. 47136/06, § 29, 25 April 2017). It follows that this part of the 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.

2. As regards the construction

26. As established by the domestic courts, the applicant failed to have his construction project approved by a State expert examination and to carry out geological exploration work before starting construction of the petrol station (see paragraphs 9, 10 and 13 above). It is true that the GDEA had issued an order authorising the applicant to start the construction, which it later revoked (see paragraphs 4 and 7 above). As a general principle, the authorities should not be prevented from correcting their mistakes, even those resulting from their own negligence. To hold otherwise may lead to a situation which runs counter to the public interest (see *Yavashev and Others v. Bulgaria*, no. 41661/05, § 64, 6 November 2012). Having regard to the time period between the dates of the issuance of the above decision and its revocation, the Court considers that the domestic authorities did not fail to act promptly in correcting their mistake. Moreover, the applicant was or should have been aware that such authorisation, in the absence of the above-mentioned documents, did not comply with the requirements of domestic law. It is also relevant that the applicant had started the construction work without having obtained the title deed in respect of the new plot of land (compare *Orujova*, cited above, § 63).

27. Therefore, 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 carry out such construction work. It follows that this part of the complaint is also 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.

B. Complaint under Article 13 of the Convention

28. In both applications, the applicant also complained under Article 13 of the Convention that his right to an effective remedy had been breached.

29. The Court, having declared inadmissible the substantive complaint under Article 1 of Protocol No. 1, concludes that the applicant has no arguable claim for the purposes of Article 13 of the Convention (compare *Orujova*, cited above, § 67, and *Tahirov v. Azerbaijan* (dec.), no. 4306/09, § 41, 17 June 2021). It follows that the complaint under Article 13 of the Convention must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 29 September 2022.

Martina Keller Deputy Registrar	Arnfinn Bårdsen President