CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 283/03
by Iskender HAMIDOV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 8 January 2004 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application introduced on 20 December 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Iskender Hamidov, is an Azerbaijani national, who was born in 1948 and lives in Baku. He is represented before the Court by Mr Vidadi Mahmudov, a lawyer practising in Baku.

I. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant is a former Minister of Internal Affairs. He was arrested in 1995 on charges of embezzlement of public funds, abuse of power and assault on a journalist. On 15 September 1995 the Supreme Court sentenced him to 14 years' imprisonment. The judgment was final and was not subject to appeal according to the criminal law in force at the material time.

Following the relevant changes in domestic law and in the light of Azerbaijan's undertaking to the Council of Europe to review the cases of political prisoners, on 26 December 2001 the Prosecutor General lodged an application, requesting the court to allow the applicant's case to be considered by an appellate court. On 6 February 2002 the Appeal Court granted the prosecutor's request and allowed an appeal to be lodged against the judgment of the Supreme Court of 15 September 1995. On 29 May 2002 the criminal proceedings were re-opened. The new trial ended on 1 July 2003 with the judgment of the Appeal Court, partially amending the Supreme Court's judgment of 15 September 1995 in favour of the applicant. The applicant's guilt was maintained but the term of imprisonment was reduced to 11 years. The applicant did not appeal against this judgment to the Supreme Court.

In September 2002, in the course of the new trial proceedings before the Appeal Court, the applicant brought an action against the prison authorities with a local court in Baku. He claimed that, according to the Criminal Procedure Code of the Republic of Azerbaijan, an accused, whose case is under consideration on appeal, should not be detained for more than seven months. He asked the court to order the prison authorities to release him.

On 28 October 2002 the Garadagh District Court dismissed the applicant's request. The court observed that the applicant had been sentenced by the Supreme Court's judgment of 15 September 1995 to 14 years' imprisonment. That judgment was final and was not subject to appeal at that time. Therefore, the applicant's current imprisonment should be considered as an execution of the judgment in force and he is kept in prison as a convict not an accused. According to the domestic criminal procedure, the reopening of the case did not change the status of the applicant.

The applicant appealed against this decision to the Appeal Court. He asked the court to quash the decision of the lower court and to recognise his detention as unlawful. On 6 December 2002 the Appeal Court dismissed the applicant's appeal and upheld the decision of the Garadagh District Court. The applicant did not appeal against this decision to the Supreme Court.

B. Relevant domestic law

1. *The Constitution of the Republic of Azerbaijan of 1995*

Article 65 reads as follows:

> "Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction reviewed by a higher tribunal or to seek pardon or lightening of his penalty."

2. *Code of Criminal Procedure of the Republic of Azerbaijan of 2000*

Article 158 § 5 reads as follows:

> "The period for detention of the accused person whose case is under consideration before the first and appeal instances courts shall not exceed:
>
> seven months with respect to grave crimes..."

3. The Law on the Application of the new Criminal Procedure Code of the Republic of Azerbaijan of 2000

Article 7 § 5 reads as follows:

> "The judgments and other final court decisions which were taken under the old Criminal Procedure Code of the Republic of Azerbaijan before 1 September 2000 may be appealed before the appellate instance court or the Supreme Court of the Republic of Azerbaijan."

Article 10 reads as follows:

> "The new Criminal Procedure Code of the Republic of Azerbaijan enters into force as from 1 September 2000."

COMPLAINTS

1. The applicant complains that following the reopening of his case he was unlawfully held in prison despite the fact that the maximum period of detention provided for the consideration of cases brought before a court of appeal was exceeded. He invokes Article 5 of the Convention. The applicant complains further that he did not receive a fair trial in the proceedings concerning his allegedly unlawful detention. In this connection, he invokes Article 6 of the Convention.

2. The applicant complains also under Article 6 of the Convention that he did not have a fair hearing in the new criminal proceedings against him. The hearings were held in a high security prison with limited access to the

public. Only those authorised by the Ministry of Justice were allowed to appear in the courtroom. He submits that the court did not correctly assess the facts and evidence put before it, did not hear the witnesses advocated by the applicant and misinterpreted the domestic law.

THE LAW

1. The applicant complains, under Articles 5 and 6 of the Convention, that he was unlawfully detained pending the outcome of his new trial and that the proceedings concerning the lawfulness of his detention were unfair.

It is true that Articles 5 and 6 of the Convention secure to everyone the right to liberty and a fair trial. However, the Court is not required to decide whether or not the facts alleged by the applicant disclose any apperance of a violation of these provisions, as under Article 35 § 1 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In the present case the applicant failed to appeal against the decision of the Appeal Court of 6 December 2002 and has, therefore, not exhausted the remedies available to him under Azeri law. Moreover, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and this part of the application must accordingly be rejected under Article 35 §§ 1 and 4 of the Convention.

2. The applicant complains further, under Article 6 of the Convention, that he did not have a fair trial in the criminal proceedings leading to the Appeal Court's judgment of 1 July 2003. However, in respect of this complaint the applicant likewise failed to appeal against the judgment to the Supreme Court and has therefore, as above, also failed to comply with the condition as to the exhaustion of domestic remedies. This part of the application must accordingly also be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President