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

FIRST SECTION

DECISION

Application no. 7361/12
Fakhraddin ISMAYILOV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 26 November 2013 as a Committee composed of:

Erik Møse, *President,*
Khanlar Hajiyev,
Dmitry Dedov, *judges,*
and André Wampach, *DeputySection Registrar,*

Having regard to the above application lodged on 14 January 2012,

Having regard to the declaration submitted by the respondent Government on 31 July 2013 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Fakhraddin Ismayilov, is an Azerbaijani national, who was born in 1957 and lives in Azerbaijan.

The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

The applicant complained under Article 6 of the Convention about the continued non-enforcement of the judgment delivered in his favour and under Article 1 of Protocol No. 1 to the Convention about the violation of the right to peaceful enjoyment of his possessions as a result of non-enforcement of the judgment.

The application had been communicated to the Government.

THE LAW

The applicant complained under Article 6 of the Convention about the continued non-enforcement of the judgment delivered in his favour and under Article 1 of Protocol No. 1 to the Convention about the violation of the right to peaceful enjoyment of his possessions as a result of non-enforcement of the judgment.

After the failure of attempts to reach a friendly settlement, by a letter of 31 July 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "The Government of the Republic of Azerbaijan hereby wish to express – by way of unilateral declaration – their acknowledgement of the fact that there has been a violation of the applicant's rights guaranteed under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.
>
> The Government are prepared to pay to the applicant, Mr Fakhraddin Ismayilov, the sum of EUR 5,000 (five thousand euros) in compensation for pecuniary and non-pecuniary damage. This sum shall be free of any tax that may be applicable and shall be payable within three months from the date of the notification of the striking-out [decision] of the Court pursuant to Article 37 of the European Convention on Human Rights. From the expiry of the above-mentioned period, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> The Government consider that this amount will be an adequate redress and sufficient compensation for the impugned violations. If, the Court however considers that the above amount does not constitute adequate redress and sufficient compensation, the Government is ready to pay to the applicant by way of just satisfaction such other amount suggested by the Court.
>
> This declaration does not exempt the Government from their obligation to enforce the court's judgment delivered in the applicant's favour.
>
> In the light of above, the Government would suggest that the circumstances of the present case allow the Court to reach the conclusion that there exists 'any other reason', as referred to in Article 37 § 1 (c) of the Convention, justifying to discontinue the examination of the application, and that, moreover, there are no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the further examination of the case by virtue of that provision. Accordingly, the Government invite the Court to strike the application out of its list of cases."

By a letter of 3 September 2013, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the suggested amount of compensation was not sufficient.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables

the Court in particular to strike a case out of its list if "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles established in its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

The Court has established in a number of cases, including those brought against Azerbaijan, its practice concerning complaints under Articles 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the non-enforcement of final judgments pronounced in the applicants' favour (see, for example, *Mirzayev v. Azerbaijan,* no. 50187/06, 3 December 2009).

Having regard to the nature of the admissions contained in the Government's declaration, which can only be interpreted as an undertaking to enforce the judgment in the applicants' favour, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

The Court considers that these amounts should be converted into the Azerbaijani manats at the rate applicable at the date of payment, and paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amounts in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

André Wampach	Erik Møse
Deputy Registrar	President