

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

FIRST SECTION

DECISION

Application no. 11916/06
by Shamsaddin JAMIYEV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 30 September 2010 as a Chamber composed of:

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 March 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Shamsaddin Jamiyev, is an Azerbaijani national who was born in 1957 and lives in Guba. He was represented before the Court by Mr A. Rzayev, a lawyer practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. The circumstances of the case

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

The applicant was a member of the Gajar-Zayd Municipality and of an opposition party, the National Front of Azerbaijan. On 2 February 2005, while the applicant and another person (S.) were at a bus stop in Gajar-Zayd village, they became involved in a dispute with A., C. and Q. It appears from the case file that A. was the head of the Gajar-Zayd Municipality, C. was also member of the Municipality and Q. was a local representative of the Guba Region Executive Authority in the village of Alekseyevka.

According to the documents produced in the subsequent criminal investigation, A., C. and Q. approached the applicant at the bus stop and asked him to pay land tax that he owed to the local authority. The applicant refused to pay the tax, saying that he did not recognise A., C. and Q. as municipal officials, and also began insulting them. According to the applicant, the dispute had nothing to do with the land tax but was rather due to an interview previously broadcast by a private television channel in which he had criticised the Municipality's activities. The dispute escalated into a physical altercation.

Following this incident, the applicant and S. were arrested by the police. On 4 February 2005 they were charged with the offence of the use of violence against State officials, under Article 315 § 1 of the Azerbaijani Criminal Code. The applicant was accused of assaulting A., C. and Q. at the bus stop.

On 28 February 2005 the bill of indictment was lodged before the first-instance court. In both the pre-trial proceedings and the proceedings before the first-instance court, the applicant protested his innocence and alleged that the criminal case against him had been fabricated. He claimed that he had not committed any crime and that, on the contrary, he had been beaten up by A., C. and Q.

On 17 March 2005 the Guba District Court found the applicant guilty and sentenced him to two years' imprisonment. The court noted in its judgment that the applicant's guilt had been proven by the testimonies of the victims (A., C. and Q.) and of various witnesses, as well as by expert opinions on the damage inflicted on the victims by the applicant.

Two witnesses testified in the applicant's defence at trial. However, the first-instance court rejected their testimonies on the grounds that they could not be accepted as evidence because the witnesses were the applicant's colleagues and their testimonies were contradicted by other evidence. It also appears that a further three witnesses who were prepared to testify in the applicant's defence were not heard by the court.

Moreover, the court examined two expert opinions of 4 February 2005 and of 16 February 2005 certifying the presence of injures on the applicant's

person and damage to his clothes. It found that the injuries could have been caused by contact with a metal object and that the damage to his clothes had been caused by the physical altercation.

The applicant appealed against his conviction.

On 22 April 2005 the Court of Appeal delivered a judgment dismissing the applicant's appeal. The Court of Appeal underlined that there was no reason to change the lower court's judgment and that the applicant's allegations were unsubstantiated.

The applicant lodged a cassation appeal, complaining of the misapplication of the relevant law and of the lower courts' failure to examine all of the defence witnesses and to assess the evidence correctly. He noted in his appeal that other witnesses for the defence who had been present at the locus of the dispute had not been heard by the court and that the witnesses for the prosecution were close relatives of the victims. Moreover, the applicant underlined that despite the fact that he had been convicted of the "use of violence against State officials", the alleged victims had not been on official duty at the time of the altercation and had not had the right to demand payment of tax from him at a bus stop. Therefore, not all of the elements of the offence under Article 315 § 1 of the Criminal Code had been met.

By a decision of 20 September 2005 the Supreme Court upheld the Court of Appeal's judgment, noting that the proceedings before the lower courts had been in accordance with the relevant law.

The applicant was released from prison following a presidential pardon given on 19 January 2006.

B. Relevant domestic law

According to Article 79 of Law on Courts and Judges of 10 June 1997, the Plenum of the Supreme Court, in the circumstances and manner established by law, reviews cases on the basis of the procedure of additional cassation appeal or new circumstances concerning violation of rights and freedoms or new discovered facts, on submission of the President of the Supreme Court, or pursuant to a protest by the Prosecutor General or an appeal by the defendant. According to Articles 427 and 459 of the Code of Criminal Procedure, after the examination of the case, the Plenum of the Supreme Court may decide to quash the lower courts' rulings and remit the case to the relevant lower court, or to vary the decision of the courts of cassation or additional cassation instances, or to quash the decision of the courts of cassation or additional cassation instances and deliver a new decision.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that his right to a fair trial had been violated because he had been arbitrarily convicted of a crime that he had not committed. He alleged that the criminal case against him had been fabricated, that the domestic courts had not assessed the facts correctly and that the relevant law had been misapplied by the domestic courts.

2. Relying on Article 6 § 3 (d) of the Convention, the applicant complained that the domestic courts had not examined defence witnesses under the same conditions as prosecution witnesses.

3. The applicant complained under Article 14 of the Convention in conjunction with Article 6 that he had been discriminated against on the grounds of his political activities, as he was a member of an opposition party.

THE LAW

I. COMPLAINTS UNDER ARTICLE 6 § 1 AND 6 § 3 (d) OF THE CONVENTION

By letter dated 21 April 2010 the Government informed the Court of their unilateral declaration, made with a view to resolving the issues raised by complaints nos. 1 and 2 above.

The declaration provided as follows:

> "The Government wish to express – by way of a unilateral declaration – their acknowledgement that, in the present case, the proceedings before the domestic courts did not comply with the requirement of fairness.
>
> In this regard, the Government are prepared to pay to the applicant a total sum of AZN 1,000 (one thousand manats) in compensation for non-pecuniary damage, plus any tax that may be chargeable on this amount. In the meantime, the Government will take all measures to ensure that the criminal proceedings are reopened by the Plenum of the Supreme Court in order to guarantee the examination of the applicant's case in accordance with the requirements of Article 6 of the Convention.
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> In the light of the 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."

In the same letter, the Government also filed the following submissions:

> "3. The Government submit that, according to the applicant's contract with his lawyer a payment for the legal fees is subject to the Court's judgment, in which the Court would afford just satisfaction to the applicant. In this context, if the Court decides to strike out the application under Article 37 § 1 (c) of the Convention the applicant is not bound to pay legal fees pursuant to a contractual obligation.
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> 4. With these in mind, the Government do not include the compensation for the applicant's claims for costs and expenses in their unilateral declaration."

In a letter of 22 May 2010 the applicant contested the amount of compensation provided in the Government's unilateral declaration, stating that it was too low. In this regard, the applicant claimed EUR 100,000 in respect of non-pecuniary damage and EUR 8,500 for costs and expenses under all heads. The applicant also submitted that there was no guarantee that reopened proceedings before the domestic courts would comply with the requirements of Article 6 of the Convention.

The Court reiterates 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 in provisions (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."

Article 37 § 1 *in fine* includes the following proviso:

> "However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court also reiterates that under certain circumstances, it may strike out an application under Article 37 § 1 (c) of the Convention 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 carefully examine the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 74-77, ECHR 2003-VI; *Swedish Transport Workers Union v. Sweden* (striking out), no. 53507/99, §§ 24-27, 18 July 2006; and *Van Houten v. the Netherlands* (striking out), no. 25149/03, §§ 34-37, ECHR 2005-IX).

Turning to the present application, the Court notes that the declaration contains a clear acknowledgment that the proceedings in the applicant's case before the domestic courts did not comply with the requirements of fairness. Moreover, the Court attaches particular importance to the Government's undertaking to reopen the domestic proceedings and ensure that the reopened proceedings meet all the requirements of fairness set out in Article 6 of the Convention. The Court observes that the domestic law allows for a possibility of the reopening of the proceedings by the Plenum of the

Supreme Court on submission of the President of the Supreme Court or following a request by the Prosecutor General.

Having regard to the nature of the admissions contained in the Government's unilateral declaration, as well as the scope and extent of the various undertakings given therein together with the amount of compensation proposed which the Court considers to be reasonable, the Court considers that it is no longer justified to continue the examination of this part of the application pursuant to Article 37 § 1 (c) (see, for the relevant principles, *Tahsin Acar,* cited above, and also *Haran v. Turkey* (striking out), no. 25754/94, 26 March 2002).

Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances relating to respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case. In view of the above, it is appropriate to strike this part of the application out of the list.

II. REMAINDER OF THE APPLICATION

The applicant further complained under Article 14 in conjunction with Article 6 that he had been discriminated against on the grounds of his political activities, as he was a member of an opposition party. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and therefore must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF RULE 43 § 4 OF THE RULES OF COURT

Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out, the costs shall be at the discretion of the Court."

The Court points out that, unlike Article 41 of the Convention, which comes into play only if the Court has previously found "that there has been a violation of the Convention or the Protocols thereto", Rule 43 § 4 allows it to make an award solely for costs and expenses in the event of an application being struck out of the list of cases (see *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 132, ECHR 2007-II).

The Court reiterates that the general principles governing the reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention (see *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], no. 25525/03, § 39, 20 December

2007). In other words, in order to be reimbursed, the costs must relate to the alleged violation or violations, have been actually and necessarily incurred and be reasonable as to quantum. Furthermore, under Rule 60 § 2, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

In the present case, taking into account the contract submitted by the applicant and the amount of work carried out by the applicant's lawyer, as well as the documentary evidence concerning postal expenses, the Court decides to award EUR 2,500 in respect of costs and expenses under all heads.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the complaints under Article 6 § 1 and 6 § 3 (d) 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 so far as it relates to the above complaints in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Holds
(a) that the respondent State is to pay the applicant, within three months, EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement; and
(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

André Wampach
Deputy Registrar

Christos Rozakis
President