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

FIFTH SECTION

DECISION

Application no. 46134/09
Rabiyya MAMMADOVA
against Azerbaijan

The European Court of Human Rights (Fifth Section), sitting on 3 February 2022 as a Committee composed of:

Mārtiņš Mits, *President,*
Lətif Hüseynov,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 46134/09) against Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 August 2009 by an Azerbaijani national, Ms Rabiyya Nagi gizi Mammadova, who was born and lives in Baku ("the applicant"), and who was represented by Mr A. Sahverdi, a lawyer based in Azerbaijan;

the decision to give notice of the complaints concerning Article 6 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 the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicant's complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention of the unlawful annulment of her title to a warehouse and a plot of land without any compensation, and the lack of impartiality of the tribunal which examined her case.

2. On 30 December 2003 the applicant bought a warehouse, which was State property, at an auction. On 13 January 2004 the relevant State authority

issued her a certificate of title in respect of the warehouse. The applicant then also privatised the plot of land underneath the warehouse and was issued with a certificate of title in respect of the land on 19 July 2004. On 16 December 2004 the applicant sold the warehouse and the plot of land, under two separate sale and purchase contracts, to the V. company. Both contracts were approved by a notary on the same date.

3. On 2 November 2005 the Baku City Trade and Services Department, a body subordinate to the Baku City Executive Authority, lodged a claim against the applicant and asked the court to declare invalid the certificates of title issued to her, arguing that the privatisation of the properties in question had not been in accordance with the procedure under domestic law. On 16 March 2006 the Khatai District Court granted the claim, declaring the certificates of title invalid and ordering the return of the properties in question to the claimant's use. The applicant appealed, arguing, *inter alia*, that she had already sold the warehouse and the plot of land to the V. company, and therefore had no ownership rights over them, and that, at the time of the lodging of the claim against her, the properties in question had been in the V. company's possession and use for a period of more than a year and three months. It appears from the case file that the V. company also appealed against the first-instance court's judgment, but its appeal was subsequently declared inadmissible by the appellate court (there is no information in the case file as regards the grounds of inadmissibility). Following a series of appeals and remittals, the domestic proceedings ended with a final judgment of 30 July 2009 of the Supreme Court, which upheld the lower courts' judgments declaring the certificates of title invalid and ordering the return of the properties in question to the claimant's use. It appears that judge R.A., a member of a three-judge panel who examined the case at the Supreme Court, had previously heard the case as one of the three judges at the appellate court (whose judgment had been quashed and remitted for fresh examination).

4. Relying on Article 1 of Protocol No. 1, the applicant complained that her title to the warehouse and the plot of land had been annulled unlawfully without any compensation. She also complained under Article 6 of the Convention of the lack of impartiality of the tribunal hearing her case, as judge R.A. had previously heard the same case as a member of the bench at the appellate court.

THE COURT'S ASSESSMENT

A. Complaint under Article 1 of Protocol No. 1 to the Convention

5. The Court observes that the applicant sold the warehouse and the plot of land to the V. company several months after being issued with certificates of title in respect of them. It has not been argued, nor does it appear from the case file, that the sale and purchase contracts, which had been approved by a

notary, had been contested or declared null and void. Moreover, the applicant herself, in her appeal before the domestic courts, submitted that she no longer had ownership rights in respect of the warehouse and the plot of land in question (compare *Mărgărit and Others v. Romania* (dec.), nos. 17500/15 and 3 others, § 22, 1 October 2019). It appears that the main purpose of the civil claim lodged against the applicant was the annulment of the privatisation that had taken place in 2003. As the privatisation had been carried out by the applicant at the relevant time, the claim was therefore lodged against her as the defendant.

6. In view of these circumstances, and in the absence of any substantiation to the contrary, the Court considers that the applicant's property rights were not interfered with as a result of the proceedings complained of. It follows that she cannot claim to be a victim of a violation of her rights under Article 1 of Protocol No. 1 to the Convention by reason of the outcome of those proceedings (compare *Euro Marketing sp. z o. o. v. Poland* (dec.), no. 49232/08, §§ 38-39, 27 November 2012; *Morén and Others v. Sweden* (dec.), no. 13224/06, §§ 43-44, 11 February 2014; and *Mărgărit and Others*, cited above, § 23). Therefore, this complaint is incompatible *ratione personae* 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 6 of the Convention

7. The Government submitted that the applicant had failed to exhaust domestic remedies. The applicant argued that judge R.A. had had a duty to withdraw from the case.

8. Under domestic law a judge had a duty to withdraw from a case when, *inter alia,* he or she had already heard the case at one of the three levels of ordinary jurisdiction, even when the parties to the proceedings had not raised an objection (see *Zeynalov v. Azerbaijan*, no. 31848/07, § 14, 30 May 2013). Notwithstanding this, the parties had the right to request the recusal of a judge on the same ground.

9. The Court observes that the applicant's lawyer was present at the court hearing before the Supreme Court, and, therefore, aware of judge R.A.'s presence in the composition of the Supreme Court's bench. Despite the possibility under domestic law to request the recusal of a judge based on the ground that he or she had already heard the case in one of the three levels of ordinary jurisdiction, the applicant's lawyer did not request, at the court hearing, the recusal of judge R.A. (compare *Roberts and Roberts v. The United Kingdom* (dec.), no. 38681/08, § 37, 5 July 2011, and *Iancu and Others v. Romania* [Committee], no. 17934/15 and 2 others, § 29, 28 September 2021). Moreover, no arguments had been provided showing that that domestic remedy would not have been effective in the circumstances of the present case. Therefore, an effective domestic remedy was available to

the applicant to request the removal of the judge whose impartiality she questioned (compare *Posokhov v. Russia* (dec.), no. 63486/00, 9 July 2002, and *Gubavičienė v. Lithuania* (dec.), no. 68611/14, 15 September 2015).

10. It follows that this complaint is inadmissible for non-exhaustion of domestic remedies and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 March 2022.

Martina Keller Deputy Registrar	Mārtiņš Mits President