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

FIFTH SECTION

DECISION

Application no. 28461/19
Fikrat PASHAYEV
against Azerbaijan

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

Stéphanie Mourou-Vikström, *President,*
Ivana Jelić,
Kateřina Šimáčková, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 20 May 2019,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Fikrat Pashayev, was born in 1969 and lives in Baku. He was represented by Mr E. Sadigov, a lawyer based in Azerbaijan.

2. In 2008 the applicant concluded contracts with a private construction company "Olimpus AZ" purchasing two flats in a building to be constructed. However, the construction company neither delivered the flats nor reimbursed their cost.

3. The director of the respondent company was convicted under Article 179.3.2 (large-scale embezzlement) of the Criminal Code on 29 November 2010 and was sentenced to eleven years' imprisonment. He died in prison in January 2012.

4. On 11 April 2013 the Yasamal District Court ruled in the applicant's favour and ordered the responded company to reimburse him 75,050 Azerbaijani manats (AZN) as the main debt, AZN 18,762 as the debt interest and AZN 20 as costs, making the total award of AZN 93,832 (approximately 85,000 euros (EUR) at the material time). A writ of execution was issued on 2 July 2013 and enforcement proceedings were instituted.

However, the applicant was not paid because the respondent company had gone bankrupt and had ceased its activities.

5. The Yasamal District Court, on 31 March 2015, put an arrest on a building which had been constructed by the respondent company. However, the arrest was later lifted because it had been established that the building in question was owned by another company and the respondent company had worked on it as a contractor.

6. On 29 May 2018 the Yasamal District Court issued another writ of execution ordering the responded company to reimburse the applicant his money.

7. It appears from the documents submitted by the parties that on various dates between 2018 and 2021 the enforcement authorities asked the District Court to cancel the execution writs because there were no assets in the respondent company's name or any funds in its bank accounts, the company had ceased its activities, its owner had died, and no successor could be identified.

THE LAW

8. The applicant's complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the final judgment in his favour were communicated to the Azerbaijani Government ("the Government").

9. The Government submitted that the national authorities had not remained passive and had taken actions to execute the judgment in the applicant's favour. In fact, immediately after the writ of execution had been issued, the Department of Enforcement Officers initiated the enforcement proceedings, however, the enforcement of the judgment was not possible because the respondent company did not have any assets or income. Therefore, the State cannot be held responsible for the non-enforcement of the judgment in question.

10. The applicant maintained his complaints.

11. The Court notes that the present case concerns the execution of a judgment against a private debtor (see *Ibrahimov v. Azerbaijan* (dec.), no. 8019/08, 27 December 2012). It recalls in this connection that the execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). However, that does not mean that a State could be held responsible for non-enforcement of a judgment due to the insolvency of the private debtor (see *Kotov v. Russia* [GC], no. 54522/00, § 90, 3 April 2012; *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003; and *Topciov v. Romania* (dec.), no. 17369/02, 15 June 2006). The Court further reiterates that in cases such as the present one, which

necessitate actions by a debtor who is a private person, the State, as the possessor of the public authority, has only a duty to act diligently to assist a creditor with the execution of a judgment (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005).

12. The Court considers that in the present case the State, as the possessor of the public authority, acted diligently while assisting the applicant with the execution of the judgment against a private debtor, the insolvent company. In particular, the enforcement officers took steps to enforce the judgment; however, the enforcement was not possible since the respondent company did not have any assets or funds. Moreover, the applicant did not specify, either before the domestic courts or before the Court, what other specific steps, if any, could have been taken to enforce the judgment and what specific omissions, if any, had been committed by the enforcement officers (see *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002).

13. Therefore, the Court cannot discern from the documents submitted by the parties that there had been a failure by the State to assist the applicant with the execution of the judgment in question.

14. In view of the above, the Court finds that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

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

Viktoriya Maradudina Acting Deputy Registrar	Stéphanie Mourou-Vikström President