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

FIFTH SECTION

DECISION

Application no. 40026/09
Rashid RAHIMOV
against Azerbaijan

The European Court of Human Rights (Fifth Section), sitting on 7 July 2022 as a Committee composed of:

Mārtiņš Mits, *President,*
Lətif Hüseynov,
Kateřina Šimáčková, *judges,*
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 40026/09) against Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 8 July 2009 by an Azerbaijani national, Mr Rashid Agababa oglu Rahimov, born in 1950 and living in Baku ("the applicant"), who was represented by Mr R.H. Mustafayev, a lawyer practising in Baku;

the decision to give notice of the application to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns complaints under Article 1 of Protocol No. 1 to the Convention and Articles 6 and 8 of the Convention concerning allegedly unlawful alienation of the applicant's property and alleged unfairness of the related civil proceedings.

2. The applicant's grandfather owned a multi-storey house built in 1896, located at 83/23 Tolstoy Street in Baku. The available documents pertaining to the house comprised an extract from a Soviet-era register of

"non-municipal buildings", dating from 1948 and issued in the name of the applicant's grandfather, and its "technical passport" issued in 1965.

3. After the death of the applicant's grandfather in 1967, his four sons inherited the house and took possession of various parts of it, but they did not register their acceptance of the inheritance. The applicant's father died in 2001. The applicant inherited his father's share of the property. He too did not register acceptance of the inheritance and did not have an ownership certificate in relation to it. However, the applicant's personal ID indicated the house as his place of residence.

4. On 23 January 2008 the Yasamal District Executive Authority ("the YDEA") issued an order to relocate the residents of houses in several streets, including Tolstoy Street, on account of a project to develop the area around the Teze Pir Mosque. The order specified that the relocated persons should be paid compensation in the amount of 2,500 Azerbaijani manats (AZN) per square metre of the total surface area of their house.

5. By a letter of 19 March 2008, the YDEA asked the applicant to vacate his part of the house which, according to the YDEA, consisted of a two-roomed flat with a total surface area of 44.55 sq. m.

6. The applicant refused to vacate the premises, arguing that the total surface area of the house was 242 sq. m and that, since it had been allegedly divided between his grandfather's four sons in equal parts, the part of the house he had inherited from his father measured 60.5 sq. m (a quarter of 242 sq. m). Moreover, since the house was located on a plot of land measuring 155 sq. m, he argued that he also owned a quarter (38.75 sq. m) of that plot of land.

7. The YDEA disagreed with the applicant's claims and on 3 April 2008 it demolished the house.

8. On 4 April 2008 the applicant lodged an action with the Yasamal District Court against the YDEA, arguing that he had been deprived of his property in breach of the applicable expropriation laws and claiming compensation in the amount of AZN 297,000. This included compensation for the alleged total surface area of his part of the house (60.5 sq. m) and his alleged share of the land (38.75 sq. m), calculated on the basis of AZN 2,500 per sq. m and increased by 20% in accordance with Presidential Decree No. 689 of 26 December 2007 ("the 2007 Presidential Decree"), the relevant provisions of which are quoted in *Aliyeva and Others v. Azerbaijan* (nos. 66249/16 and 6 others, § 70, 21 September 2021).

9. By a judgment of 9 July 2008 of the Yasamal District Court, subsequently upheld on 24 October 2008 and 6 February 2009 by the Baku Court of Appeal and the Supreme Court respectively, the applicant's claim was granted in the part concerning "payment of compensation for damage caused by the unlawful demolition of the property", in so far as it pertained to 44.55 sq. m of the house. The applicant was awarded AZN 111,375 in

compensation (AZN 2,500 per sq. m). The remainder of the applicant's claim was dismissed.

10. In particular, the courts found that the applicant had not formally accepted the inheritance, had not had any registered ownership rights over the house and could not produce any documentary or other evidence proving that his share of the house was 60.5 sq. m. Having heard several witnesses, including the applicant's relatives who had also inherited parts of the house, and having considered the YDEA's submissions, the courts established that the part of the house *de facto* inherited by the applicant had consisted of two rooms with a total surface area of 44.55 sq. m. The courts found that the applicant could claim proprietary rights only in relation to that part of the house, by virtue of actually possessing it in accordance with Article 1243.2 of the Civil Code, which provided for *de facto* acceptance of an inheritance by way of taking actual possession of the property. The courts also found that, despite that, the applicant had not actually lived in the house and that it had been in a state of disrepair such that it had been unsuitable as accommodation at the time of its demolition.

11. The courts dismissed the claim in respect of the additional 20% compensation, finding that the 2007 Presidential Decree applied only to cases of expropriation of privately owned property by the Cabinet of Ministers for State needs. In the present case, there had been no such expropriation. The courts also dismissed the applicant's claim in respect of the plot of land, finding that he had no registered rights over it and referring, among other provisions, to Article 68 of the Land Code, which provided, *inter alia*, that title to land came into being upon registration.

THE COURT'S ASSESSMENT

I. ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

12. The applicant complained under Article 1 of Protocol No. 1 to the Convention that his private property had been unlawfully expropriated and that the amount of compensation paid to him for his share of the house and the plot of land underneath it was unlawful and inadequate because it had not been calculated on the basis of the actual surface area owned by him, no compensation had been awarded in respect of the plot of land and no additional 20% compensation had been paid.

13. The Court's case-law on the concept of "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention has been summarised in *Akhverdiyev v. Azerbaijan* (no. 76254/11, § 73, 29 January 2015), and *Aliyeva and Others* (cited above, §§ 102-04). The case-law principles concerning applicants' "victim status" have been summarised in *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, § 178-81, ECHR 2006-V), *Gäfgen v. Germany* ([GC], no. 22978/05, §§ 115, ECHR 2010) and *J.B. and*

Others v. Hungary ((dec.), nos. 45434/12 and 2 others, §§ 58-59, 27 November 2018).

14. As to the applicant's argument that his inherited share of the house amounted to 60.5 sq. m, the Court notes that he, like his father before him, never formally registered his inheritance rights over any part of the house and that he has been unable to produce any documentary evidence in support of this claim. In such circumstances, there are no elements that would lead the Court to disregard the domestic courts' factual findings, made on the basis of the available witness evidence and an assessment by the YDEA, that the surface area of the part of the house inherited *de facto* by the applicant was 44.55 sq. m and that he had no rights over any additional surface area.

15. As to the applicant's claim in respect of the part of the land underneath the house, the Court notes that, under domestic law as applicable at the relevant time, a "lawful user" of immovable property (such "right of use" arising by virtue of having registered private ownership over that immovable property) located on State-owned land had a right to have the land transferred into his or her ownership free of charge, and that this right gave rise to a "legitimate expectation" of acquiring ownership over the land (see *Akhverdiyev*, cited above, §§ 56-58 and 74-77). In the present case, however, the applicant never formally accepted the inheritance and never registered his ownership rights over his part of the house; therefore, at the time of its demolition, it was not formally in his "private ownership" within the meaning of domestic law. In such circumstances, prior to the house's demolition, the applicant had no legally exercisable right to have any part of the land underneath the house transferred into his ownership. The Court reiterates in this respect that a conditional claim which lapses as a result of the non-fulfilment of the condition cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Aliyeva and Others*, cited above, §§ 104 and 113). Accordingly, it has not been demonstrated in the present case that the applicant ever acquired a "legitimate expectation" to ownership of the land in question.

16. As to the claim in respect of the additional 20% compensation under the 2007 Presidential Decree, the applicant never registered a formal right of ownership over the part of the house in question and had no "legitimate expectation" of acquiring ownership of the land. In such circumstances, the Court accepts the domestic courts' finding that in the present case there had been no "expropriation of private property for State needs", within the meaning of domestic law, and that therefore the relevant expropriation laws were not applicable (contrast *Akhverdiyev*, cited above, §§ 90 et seq.). For these reasons, it has not been shown that the provisions of the 2007 Presidential Decree were applicable to the applicant's situation (contrast *Aliyeva and Others*, cited above, §§ 5 and 109-12). Accordingly, he had no enforceable claim under those provisions.

17. Having regard to the considerations in paragraphs 14-16 above, the Court finds that it cannot be established that the applicant's claims in respect of the additional surface area of the house beyond the 44.55 sq. m established by the domestic courts, the plot of land underneath the house and the additional compensation under the 2007 Presidential Decree amounted to his "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. It follows that the part of the complaint relating to those claims is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

18. As to the remainder of the complaint concerning the part of the house with a surface area of 44.55 sq. m, the Court notes that although the applicant had never formally accepted inheritance of that property and had never registered any ownership rights over it, the domestic courts found that he nevertheless had a proprietary interest in that part of the house stemming from the fact that he had *de facto* taken possession of it. Accordingly, the Court accepts that that part of the house constituted the applicant's "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

19. However, the Court considers that by granting the applicant's claim concerning "payment of compensation for damage caused by the unlawful demolition of the property", the domestic courts acknowledged in substance that there had been an unlawful interference with the applicant's enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention. Moreover, they ordered the payment of compensation in the amount of AZN 111,375, calculated on the basis of the surface area constituting the applicant's "possessions" in the present case and on the unit price of AZN 2,500 per sq. m. That unit price was indicated by the applicant himself in his claim lodged with the first-instance court (see paragraph 8 above). In such circumstances, the Court considers that the amount of compensation awarded was reasonable and constituted appropriate and sufficient redress for the breach of the Convention.

20. It follows that, in respect of the remainder of this complaint, the applicant can no longer claim to be a victim of a violation of Article 1 of Protocol No. 1 to the Convention. The remainder of the complaint is therefore 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.

II. ARTICLE 8 OF THE CONVENTION

21. The applicant complained that the unlawful demolition of the house had breached his right to respect for his home. The Government argued that the applicant had not lived in the house, and that he had merely been formally registered as residing at that address.

22. Having regard to the domestic courts' findings (see paragraph 10 above), the parties' submissions and the largely insufficient evidence to the contrary submitted by the applicant, the Court accepts the domestic courts' finding that the applicant had not resided in the house. Accordingly, it could not be considered his "home" within the meaning of Article 8 of the Convention.

23. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

III. ARTICLE 6 OF THE CONVENTION

24. The applicant complained that the domestic courts had delivered judgments lacking proper reasoning.

25. 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 finds that the domestic courts' decisions do not appear to be arbitrary or unreasonable and that there is nothing to suggest that the proceedings were unfair.

26. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 September 2022.

Martina Keller Deputy Registrar	Mārtiņš Mits President