CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 22759/04
by Ogtay RAHIMOV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 3 January 2008 as a Chamber composed of:

Loukis Loucaides, *President,*
Nina Vajić,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges,*
Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 30 March 2004,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ogtay Rahimov, is an Azerbaijani national who was born in 1951 and lives in Baku. He was represented before the Court by Mrs N. Huseynova, a lawyer practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr C. Asgarov.

A. The circumstances of the case

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

The applicant was the chairman of the Metanet Construction Cooperative ("the Cooperative").

In 1993 the Cooperative concluded a construction contract with the Education Department of the Nasimi District of Baku ("the Nasimi Education Department") according to which the Cooperative agreed to repair the heating system in one of the district's public schools. In 1997 a similar contract was concluded with the Education Department of the Narimanov District of Baku ("the Narimanov Education Department").

Although the Cooperative had completed its contract obligations, it did not receive any payments under either contract.

1. Proceedings concerning the debt of the Nasimi Education Department

The Cooperative, represented by the applicant, lodged an action against the Nasimi Education Department. By a judgment of 27 January 1998 the Economic Court ordered the Nasimi Education Department to pay the Cooperative 34,492,634 Azerbaijani manats (AZM).

Subsequently, on an unspecified date the Economic Court revised its judgment and reduced the awarded amount to AZM 18,321,250.

No appeal was filed against the judgment and it entered into force. In January 1998 the Economic Court issued a writ of execution of the judgment.

Following a number of complaints by the applicant to the enforcement authorities, it appears that on an unspecified date in 2001 the judgment was partially executed and AZM 5,000,000 of the judgment amount paid to the Cooperative. However, despite the applicant's continuous complaints to the Nasimi District Department of Judicial Observers and Enforcement Officers (*Nəsimi rayon Məhkəmə Nəzarətçiləri və Məhkəmə İcraçıları şöbəsi*; "the Nasimi Department of Enforcement Officers"), the remainder of the judgment award, amounting to AZM 13,321,250, was not paid.

The Cooperative lodged a new action against the Nasimi Education Department and Nasimi District Finance Department complaining about non-execution of the judgment. On 29 January 2004 the Nasimi District Court ordered the defendants to comply with the judgment of 27 January 1998. On 29 April 2004 the Court of Appeal quashed this decision, finding that the complaints concerning non-enforcement of final judgments should be directed against the Nasimi Department of Enforcement Officers and not the original defendant.

The Cooperative lodged another action asking the court for "indexation" of the judgment amount due to inflation. On 19 May 2004 the Local

Economic Court No. 1 granted this request. It found that, taking into account the inflation, the remainder of the amount to be paid by the Nasimi Education Department pursuant to the judgment of 27 January 1998 constituted AZM 17,317,625.

2. Proceedings concerning the debt of the Narimanov Education Department

The Cooperative, again represented by the applicant, lodged a separate action against the Narimanov Education Department. By a judgment of 5 January 2000 the Economic Court ordered the Narimanov Education Department to pay the Cooperative AZM 135,505,731.

Although the applicant sent numerous inquiries to the Narimanov District Department of Judicial Observers and Enforcement Officers within the next two years, the judgment was not enforced.

The Cooperative lodged a new action against the Narimanov Education Department and Narimanov District Finance Department complaining about non-execution of the judgment. On 26 March 2004 the Narimanov District Court ordered the defendants to comply with the judgment of 5 January 2000. On 17 August 2004 the Court of Appeal upheld this decision.

The Cooperative lodged another action asking the court for "indexation" of the judgment award due to inflation. On 19 May 2004 the Local Economic Court No. 1 granted this request. It found that, taking into account the inflation, the amount to be paid by the Narimanov Education Department pursuant to the judgment of 5 January 2000 constituted AZM 149,056,304.

3. Full execution of the judgments of 27 January 1998 and 5 January 2000

According to the Government the delayed execution of the judgments of 27 January 1998 and 5 January 2000 was due to the fact that the Cooperative's bank account was closed since 1998 for unspecified reasons.

On 19 April 2007 the outstanding amounts awarded by both judgments were transferred to an alternative bank account as directed by the applicant.

By a letter of 19 April 2007 addressed to the Nasimi Department of Enforcement Officers, the applicant acknowledged the receipt of the outstanding amounts and noted that he had no further complaints before the domestic authorities concerning the execution of the judgments of 27 January 1998 and 5 January 2000.

B. Relevant domestic law

In accordance with the Civil Code of 1 September 2000 a cooperative is a type of commercial company which is a voluntary union of individuals or

legal entities established for the purpose of satisfying material and other needs of its members through consolidation of their material contributions (Article 109.1). A cooperative can be established by at least five members (Article 109-1.1).

A "full" member, in essence, enjoys rights similar to those of founders or shareholders of other types of legal entities, including rights to participate in the management and to receive a share of the cooperative's profits (Articles 109.2 and 109.4 *in fine*). An "associative" member's rights to participate in the management are limited (Article 109.3). The cooperative's profits are distributed to the members in accordance with their shares, as well as the extent of their participation in the function of the cooperative, by way of contributing personal labour or otherwise (Article 110).

The supreme management body of a cooperative is the general meeting of members. Each member has one vote at the general meeting regardless of the size of his or her contribution to the cooperative's fund (Articles 111.1 and 111.5).

The executive bodies of a cooperative are a management board and/or a chairman. A cooperative's chairman may be elected only from among the cooperative's members. The chairman is elected for a specified term at the general meeting of members and has a right to represent the cooperative (Articles 111.1 and 111.10).

Article 69.2 of the Code of Civil Procedure of 1 September 2000 provides that legal entities can be represented before courts by their bodies, acting within the scope of powers conferred on them by law, regulations or articles of incorporation of the legal entity, or by representatives acting on the basis of a power of attorney.

COMPLAINTS

The applicant complained that the delayed enforcement of the judgments of 27 January 1998 and 5 January 2000 violated his rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE LAW

The applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the authorities' failure to execute the judgments of 27 January 1998 and 5 January 2000 in a timely manner. Article 6 provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

Article 1 of Protocol No. 1 provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

The Government submitted that the alleged violations did not directly affect the applicant and argued that the case should be struck out of the Court's list of cases. The Government further argued that the delay in execution was caused by the fact that the Cooperative's bank account was closed. Following the communication of the present application, as soon as the applicant informed the enforcement authorities of the details of an alternative bank account, the amounts awarded to the Cooperative by the judgments of 27 January 1998 and 5 January 2000 were fully paid.

The applicant failed to make any submissions in reply within the time-limits specified by the Court. Nevertheless, by a fax of 3 October 2007, he indicated his intention to pursue the application.

B. The Court's assessment

The Court notes that although the applicant failed to submit any observations in compliance with the Court's repeated requests to this effect, he nevertheless indicated his intention to pursue the application. In such circumstances the Court considers that the application should not be struck out of the list of cases under Article 37 § 1 (a) of the Convention. The Court will therefore proceed with the examination of the application on the basis of the materials available in the case file.

The Court observes that the applicant was the chairman of the Cooperative, competent to act on its behalf in the domestic proceedings. Although the applicant represented the Cooperative in the domestic courts, it was the Cooperative who was party to the proceedings rather than the applicant himself. The judgments of 27 January 1998 and 5 January 2000 were delivered in favour of the Cooperative and the lengthy non-execution of those judgments directly affected the rights of the Cooperative. In this connection, the Court reiterates that the term "victim" in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue (see, for example, *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 66).

The Court notes that any company under Azerbaijani law possesses a legal personality which is distinct from those of its directors and shareholders. There may be differences of opinion among a company's shareholders, or between its shareholders and its directors, as to the reality of an infringement of the company's rights or concerning the most appropriate way of reacting to such an infringement (see *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330-A, p. 33, § 65). In this context, the Court reiterates that piercing the "corporate veil" and disregarding a company's legal personality as regards the question of being the "person directly affected" will be justified only in exceptional circumstances (ibid., pp. 33-34, § 66; see also *Camberrow MM5 AD v. Bulgaria* (dec.), no. 50357/99, 1 April 2004, and *Capital Bank AD v. Bulgaria* (dec.), no. 49429/99, 9 September 2004).

Having thoroughly examined the applicant's submissions, the Court finds that it does not transpire from these submissions that the applicant had an intention to lodge the present application on behalf of the Cooperative. On the contrary, the applicant lodged the application solely in his own name and complained about violations of his personal rights as the chairman of the Cooperative (compare with *Bayramov v. Azerbaijan* (dec.), no. 23055/03, 4 February 2006; *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005; and *J.W. v. Poland*, no. 27917/95, Commission decision of 11 September 1997, Decisions and Reports 90, p. 69).

Accordingly, in so far as the application has been lodged by the applicant in his own name, it remains to be seen whether there were any exceptional circumstances allowing the applicant to claim to be a "victim" of the alleged violations in disregard of the Cooperative's legal personality. To this effect, the Court reiterates that the sole owner of a company can claim to be a "victim" within the meaning of Article 34 of the Convention in so far as the impugned measures taken with regard to his or her company are concerned (see *Nosov*, cited above, and *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI). On the other hand, the executive director of or a minority shareholder in a company cannot claim to be a "victim" of a violation of the Convention, having lodged an application in his or her own name rather than on behalf of the company, whereas the company and not the applicant was a party to the domestic proceedings at issue (see *J.W. v. Poland*, cited above).

In the present case there is no detailed information in the case file concerning the ownership of the Cooperative. Despite the Court's specific question put to the parties in respect of the applicant's "victim" status, the applicant failed to provide any information concerning his share of ownership of the Cooperative or any documents, such as the Cooperative's charter or articles of incorporation, which could reveal such information.

As it appears from the relevant provisions of the domestic law the applicant, as the chairman of the Cooperative, must have been a member

and, as such, owned a share in it (Article 111.1 of the Civil Code). It is not clear whether the applicant was a holder of a majority or minority of shares in the Cooperative as the parties, and in particular the applicant, failed to provide any clarification in this regard. Nevertheless, it appears that, in any event, there was no theoretical possibility for the applicant to be the Cooperative's sole owner, as the domestic law required that a cooperative must be founded by at least five members by way of making their material contributions to it (Articles 109.1 and 109-1.1 of the Civil Code).

In the light of the above, the Court considers that it has not been established in the present case that there are any exceptional circumstances justifying the applicant's claim to be a "victim" in so far as the alleged violations of the Cooperative's rights are concerned. Accordingly, the applicant, having lodged the application in his own name, cannot claim to be a "victim" within the meaning of Article 34 of the Convention (compare with *Bayramov*, cited above).

It follows that this application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention to this case; and

Declares the application inadmissible.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President