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

FIRST SECTION

DECISION

Application no. 28257/14
Dursun RUSTAMOVA
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 7 May 2024 as a Committee composed of:

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Ivana Jelić*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 28257/14) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 1 April 2014 by an Azerbaijani national, Ms Dursun Mammadkhan gizi Rustamova (*Dursun Məmmədxan qızı Rüstəmova* – "the applicant"), who was born in 1943, lives in Sumgayit and was represented by Mr F. Namazli, a lawyer based in Azerbaijan;

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 case concerns the allegedly unlawful demolition of the applicant's house on the ground that it had been built on squatted land.

2. Following the capture of her native Lachin District by the Armenian Armed Forces in 1992, the applicant moved to the Agjabadi District as an internally displaced person ("IDP").

3. According to the applicant, she eventually settled in a house that she had built without a permit in the Sumgayit Station area of Sumgayit in 2004 and had continuously lived in that house until 24 July 2011, when it had been

demolished by representatives of the Sumgayit City Executive Authority ("the SCEA").

4. In a letter of 4 August 2011 addressed to the applicant, the SCEA stated that it had dismantled a structure that had been unlawfully erected by her on squatted land. In another letter dated 26 September 2011, addressed to the State Committee for Family, Women and Children Affairs, the SCEA stated that it had prevented unlawful construction work carried out by the applicant on squatted land.

5. According to an undated information note (*məlumat*) provided by the Representation of the Head of the Lachin District Executive Authority in Garakechdi Village ("the Garakechdi Village Executive Representation") to the Lachin District Executive Authority, although the applicant had been registered in Garakechdi village of Lachin District, she had actually been living in a house with a surface area of 30 sq. m in the Sumgayit Station area since 2004, which had been demolished by the employees of the SCEA in 2011. It also stated that she had subsequently lived in a relative's house in the Sumgayit Station area.

6. On 26 August 2011 the applicant lodged a claim against the SCEA and the State Committee on Refugees and IDPs ("the Committee") seeking compensation in respect of pecuniary and non-pecuniary damage suffered as a result of the unlawful demolition of her house and the loss of her belongings. She also asked to be provided with a living space pursuant to the Law on the Social Protection of IDPs which stipulated that the Committee and the local executive authorities had to provide IDPs with suitable accommodation.

7. In the proceedings at the first-instance court, the representative of the SCEA argued that the applicant had unlawfully occupied land belonging to the Sumgayit municipality and had attempted to erect a house on that land in 2011 without the relevant authorisation.

8. On 29 November 2012 the Sumgayit Administrative-Economic Court dismissed the applicant's claim, finding mainly that the construction of an unauthorised building on municipal land had been prevented. The court also referred to a letter of 15 February 2012 from the Committee which stated that the applicant was registered in the Agjabadi District but lived in the Sumgayit Station area (without specifying the address) as an IDP and was exempt from paying utility bills.

9. The applicant appealed against that decision, arguing that, as an IDP without any other place to live, she had continuously resided in the demolished house for seven years without any objection by the authorities. She referred to the SCEA's letters and the information note from the Garakechdi Village Executive Representation (see paragraphs 4 and 5 above) in support of her claims. In addition, she argued that her claim concerning the provision of a living space had not been examined at all.

10. On 6 May 2013 the Sumgayit Court of Appeal upheld the first-instance court's judgment, reiterating its reasoning.

11. By a judgment of 4 September 2013 the Supreme Court dismissed the applicant's cassation appeal. That judgment was notified to her on 1 October 2013.

12. The applicant complained that the demolition of her house, without a court order and without any compensation, had constituted an unlawful interference with her rights under Article 1 of Protocol No. 1 to the Convention. She also complained that the demolition of her house had breached her right to respect for her home.

THE COURT'S ASSESSMENT

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

13. The Court refers to the general principles established in its case-law and set out in *Ahmadova v. Azerbaijan* (no. 9437/12, § 28, 18 November 2021), which are equally pertinent to the present case.

14. The Court notes that the domestic courts found that the applicant had been prevented from erecting the house in question while the construction was ongoing (see paragraphs 8 and 10 above). The applicant, on the other hand, argued that she had already built a house and had been residing there since 2004. The Court does not find it necessary to resolve this matter, as even assuming that the applicant had indeed finalised the construction of the house in question, it could still not constitute her possessions for the following reasons.

15. The applicant did not have a construction permit or any authorisation to construct a house. In this respect, the Court notes that under Azerbaijani law, unauthorised constructions cannot form the object of property rights (see *Ahmadova*, cited above, §§ 14 and 29).

16. Moreover, the applicant has not argued that she paid any taxes on the house in question and, while she claimed that the house had been furnished with electricity and running water, she failed to provide any documents, such as a contract regarding the provision of utility services, in support of that assertion (see *Alif Ahmadov and Others v. Azerbaijan*, no. 22619/14, § 43, 4 May 2023, and compare *Ahmadova*, cited above, § 32, with further references).

17. The Court further notes that the absence of any reaction from the State authorities over a certain period of time should not have been understood by the applicant as meaning that no measures could be taken in respect of the house in question (compare *Hamer v. Belgium*, no. 21861/03, § 85, ECHR 2007-V (extracts)). Finally, the duration of the possession of the house alone is not enough to lead to the conclusion that the applicant's proprietary interest in the house was sufficiently established and weighty as to amount to a "possession" within the meaning of the rule expressed in the first sentence

of Article 1 of Protocol No. 1 to the Convention (see *Alif Ahmadov and Others*, cited above, § 44, with further references).

18. In the light of the foregoing, the Court considers 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 of the Convention.

B. Complaint under Article 8 of the Convention

19. The Court notes that the applicant's complaint that the demolition of her house had breached her right to respect for her home falls to be considered under Article 8 of the Convention.

20. The Government submitted that the applicant had no links to the "construction in question" as she had not resided in it, and thus could not claim that it was her home within the meaning of Article 8 of the Convention. They also argued that she had failed to exhaust the domestic remedies in respect of this complaint.

21. The applicant, in reply, maintained that she had lived in the house in question until its demolition in 2011 and that the house had been provided with electricity and water.

22. The Court notes that the parties are in dispute regarding the applicability of Article 8 of the Convention in the present case. In that connection, it reiterates that the concept of "home" within the meaning of Article 8 is not limited to premises which are lawfully occupied or which have been lawfully established. It is an autonomous concept which does not depend on classification under domestic law. Whether or not particular premises constitute a "home" which attracts the protection of Article 8 will depend on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (see *Hasanali Aliyev and Others v. Azerbaijan*, no. 42858/11, § 31, 9 June 2022).

23. As it appears from the case file, the applicant continued to be registered in the Agjabadi District (see paragraph 8 above). The Court has previously held that the sole fact of being registered at a different address was not sufficient to conclude that the person had established his or her home there and that all the relevant circumstances had to be taken into account (ibid., § 34).

24. As mentioned above, despite claiming that her house had been furnished with electricity and running water, the applicant failed to submit any contracts with providers of utility services (see paragraph 16 above). She did not submit any photo or video recordings demonstrating that the house had been furnished and equipped with household items (compare *Hasanali Aliyev and Others*, cited above, § 16). Nor did she provide any documents demonstrating the purchase of any such items. Moreover, she did not describe her links to the area and the community, or provide statements from her

neighbours confirming that she had actually resided in the house in question (contrast *Prokopovich v. Russia*, no. 58255/00, § 37, ECHR 2004-XI (extracts)).

25. In view of the above, the Court concludes that the applicant failed to demonstrate that her links to the house in question were sufficient and continuous enough in order for it to be qualified as her "home" within the meaning of Article 8 of the Convention.

26. It follows that this complaint is also 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 of the Convention. Consequently, the Court does not find it necessary to examine the second objection raised by the Government (see paragraph 20 above).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 May 2024.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President