

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

1959 · 50 · 2009

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 4242/07
by Shakir RZAKHANOV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 26 November 2009 as a Chamber composed of:

Christos Rozakis, *President,*
Nina Vajić,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 8 January 2007,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Shakir Rzakhanov, is an Azerbaijani national who was born in 1961 and is currently serving a life sentence in Gobustan Prison. He is represented before the Court by Mr E. Zeynalov.

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

## A. Criminal proceedings against the applicant

On 18 July 1997 the Baku City Court convicted the applicant of complicity in two counts of murder and complicity in arson and was sentenced to death penalty with confiscation of property.

On 19 August 1997 the Supreme Court upheld this judgment. No further appeal lay against the Supreme Court's decision.

Following the conviction, the applicant was transferred to the 5th Wing of Bayil Prison designated for convicts sentenced to death. Despite the existence of the death penalty as a form of punishment under the criminal law applicable at that time, the Azerbaijani authorities had pursued a *de facto* policy of moratorium on the execution of the death penalty since June 1993 until the abolition of the death penalty in 1998.

On 10 February 1998 Parliament passed the Law on Amendments to the Criminal Code, Code of Criminal Procedure and Correctional Labour Code of the Republic of Azerbaijan in connection with the Abolition of the Death Penalty in the Republic of Azerbaijan ("the Law of 10 February 1998"), which amended all the relevant domestic legal provisions, replacing the death penalty with life imprisonment. The penalties of all convicts sentenced to death, including the applicant, were to be automatically commuted to life imprisonment.

Starting from 2002, the applicant sent several individual complaints to the Constitutional Court, arguing that the life sentence had been imposed on him unlawfully and that his penalty should have been commuted to fifteen years' imprisonment. However, the Constitutional Court was vested with competence to examine individual complaints only in 2004.

By a letter of 5 August 2005, the Constitutional Court refused to entertain the applicant's complaints and noted that, according to its earlier decision of 28 July 2005, issues regarding commutation of the death penalty to life sentence in individual cases should be subject to examination by the courts of general jurisdiction on a case-by-case basis.

On 6 November 2005 the applicant lodged an action with the Garadagh District Court, complaining that the new sentence of life imprisonment had been applied retroactively to his detriment. He argued that his sentence should have been commuted to fifteen years' imprisonment, which had been the only alternative to the abolished death penalty at the time when he had committed the criminal offences.

On 16 November 2005 the Garadagh District Court confirmed the commutation of the applicant's sentence from the death penalty to life imprisonment under the Law of 10 February 1998. The applicant was not present personally and was unrepresented at that hearing, but a public prosecutor was present.

On 23 December 2005 the Court of Appeal dismissed an appeal lodged by the applicant against that decision and upheld the commutation of the applicant's sentence under the Law of 10 February 1998.

On 18 July 2006 the Supreme Court upheld the lower courts' decisions. The applicant was not present during the examination of his appeals.

### B. Alleged ill-treatment in prison

In January 2001 the applicant was transferred to Gobustan Prison.

According to the applicant, on 11 January 2004 he was taken to the office of one of the high-ranked officers of the prison guard. He was first allegedly admonished for sending "too many complaints to the Constitutional Court". He was then handcuffed and beaten with rubber truncheons and wooden clubs by several prison guards, including the prison governor. The beating lasted around forty minutes. Thereafter he was dragged out and placed in a punishment cell, where he was held until 14 January 2004. He received no medical aid. According to the applicant, the information about his ill-treatment was in some way leaked to his mother.

On 15 January 2004 the applicant was visited by the Ombudsman, in the presence of his lawyer and relatives. However, according to the applicant, the Ombudsman did not take any action, despite having seen his injuries.

According to the applicant, on 17 January 2004 the applicant was visited by the delegation of the Council of Europe's Ago Group. The applicant told them about the alleged ill-treatment. The delegation also met the applicant's mother. According to the applicant, the delegation informed the Deputy Minister of Justice of its concern with the applicant's complaints. The Deputy Minister of Justice promised to launch an investigation.

However, according to the applicant, no adequate investigation was held. In the summer of 2004, the applicant sent complaints to the Prosecutor General's Office and the Ministry of Justice.

In July or August 2004 the applicant was taken to the Medical Facility of the Ministry of Justice for a forensic examination. However, according to him, forensic experts intended to hide the fact of the injuries by taking X-rays of his uninjured leg instead of the injured leg. Therefore, he refused to undergo further examination and was taken back to the prison.

According to the applicant, the investigation was carried out by the Garadagh District Prosecutor's Office, but no effective investigative steps were taken.

In March and April 2006 the applicant sent several complaints to the Prosecutor General's Office and the Ministry of Justice. The General Prosecutor's Office replied that his complaints had been forwarded to the Ministry of Justice. However, he received no further reply from any of the two State authorities.

In May 2006 the applicant attempted to lodge a complaint with the Garadagh District Court against the law-enforcement authorities' inactivity, but this complaint was intercepted by the prison authorities and was not sent to the court.

In June 2006 the applicant lodged, through his mother, a lawsuit with the Garadagh District Court, seeking compensation for the alleged ill-treatment. On 9 June 2006 the Garadagh District Court refused to admit the lawsuit because it did not comply with the formal requirements.

On an unspecified date the applicant resubmitted the lawsuit, naming the administration of Gobustan Prison as a defendant. On 22 September 2006 the Garadagh District Court again refused to admit the lawsuit owing to non-compliance with the formal requirements.

### C. Conditions of detention

As noted above, the applicant had been detained in Bayil Prison until January 2001, when he was transferred to Gobustan Prison. He is currently serving his life sentence in Gobustan Prison.

The applicant's account of the conditions of his detention in Bayil Prison and Gobustan Prison is similar to that summarised in *Pashayev v. Azerbaijan* ((dec.), no. 36084/06, 24 September 2009).

## COMPLAINTS

1. The applicant complained under Article 3 of the Convention that on 11 January 2004 he was beaten by prison guards and that the domestic authorities had not carried out an effective investigation into his complaints of ill-treatment.

2. The applicant complained under Article 3 of the Convention of the conditions of detention in Bayil Prison and Gobustan Prison.

3. The applicant complained under Article 6 of the Convention that, in the proceedings concerning his complaint about the lawfulness of the commutation of the death penalty to life imprisonment, the hearings were held in his absence and in the absence of his lawyer. He also complained that the domestic courts in those proceedings had not been independent and impartial and that the proceedings had generally failed to comply with the requirement of fairness.

4. The applicant complained under Article 7 of the Convention that the sentence to life imprisonment had been applied retroactively to his detriment because, prior to the introduction of this new sentence, the only alternative to the death penalty had been a sentence of fifteen years' imprisonment

# THE LAW

1. The applicant complained under Article 3 of the Convention that he had been ill-treated by prison guards on 11 January 2001 and that no effective investigation into his allegations of ill-treatment had been carried out.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant complained under Article 3 of the Convention of the conditions of detention in Bayil Prison and Gobustan Prison.

The Court notes that the present complaint partially relates to events that occurred prior to 15 April 2002, the date of the Convention's entry into force with respect to Azerbaijan. Accordingly, the part of the complaint concerning the conditions of detention during the applicant's entire period of detention in Bayil Prison, as well as his detention in Gobustan Prison prior to 15 April 2002, is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

As to the events that occurred after 15 April 2002, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant complained under Article 6 of the Convention about the alleged violation of various guarantees of fair trial in the proceedings concerning his complaint about the lawfulness of the commutation of the death penalty to life imprisonment (see complaint no. 3 above). He also complained under Article 7 of the Convention that the sentence to life imprisonment had been applied retroactively to his detriment (see complaint no. 4 above).

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 they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Decides* to adjourn the examination of the applicant's complaints concerning the alleged ill-treatment by prison guards and the conditions of detention during the period after 15 April 2002;

*Declares* the remainder of the application inadmissible.

Søren Nielsen
Registrar

Christos Rozakis
President