CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 35608/02
by Aydin SHIRINOV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 19 January 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 24 September 2002,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Aydin Shirinov, is an Azerbaijani national who was born in 1950 and lives in Baku. He was represented before the Court by Mr H. Saddadinov, a lawyer practising in Baku.

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

In November 2000 the applicant was arrested on suspicion of his complicity in murder and robbery which had taken place in 1993. Subsequently, the Nasimi District Court ordered his detention on remand based on the accusation that, as a member of a criminal group, he had

incited the assassination of a businessman (A.M.) with the aim of acquiring his property.

Before the trial, a state-owned television channel broadcasted a programme about A.M.'s murder, mentioning the applicant's name and the alleged circumstances of his involvement in this crime. According to the applicant, the programme created a general impression of him as an accomplice to the murder.

The applicant's case was tried by the Military Assize Court together with cases of five other defendants, all of whom, to a different extent, were considered to be members of an organised criminal group that had committed a series of crimes. According to the applicant, the testimony of one of the other defendants, A.T., was the only source of evidence showing the applicant's guilt. In particular, in a vague and inconsistent manner, A.T. testified that, in 1993, the applicant had instructed him to murder A.M. and take his property. On 5 November 2001 the Military Assize Court convicted the applicant as an accomplice to murder and robbery and sentenced him to eight years' imprisonment.

The applicant appealed. He claimed that his conviction had been unsubstantiated, because the first-instance court had based its findings solely on A.T.'s testimony, which could not be considered as trustworthy evidence. He further claimed that the court had failed to consider other relevant evidence showing his innocence.

During the hearing in the Court of Appeal, A.T., the principal witness in the applicant's case, made inconsistent statements which, on occasions, even contradicted his own testimony given before the first-instance court. In particular, he testified that the applicant had not been involved in A.M.'s murder, and that his own previous testimony incriminating the applicant had been false and made under pressure from the investigating authorities. However, the Court of Appeal did not specifically examine the inconsistency of A.T.'s statements. On 13 February 2002 the Court of Appeal dismissed the applicant's appeal and upheld the first-instance judgment.

The applicant appealed in cassation. He made claims similar to those raised before the Court of Appeal. In addition, he claimed that the testimonies given by A.T. throughout the first-instance and appellate proceedings had been inconsistent, contradictory and illogical and, as such, could not serve as the basis for his conviction.

On 4 July 2002 the Supreme Court dismissed the applicant's appeal as unsubstantiated. Without specifically examining the inconsistency of A.T.'s statements, the court found that the applicant's guilt had been fully proven based on the totality of evidence.

On 29 December 2003 the applicant was released from serving the remainder of his sentence pursuant to a presidential pardon decree.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that the domestic courts were not independent and impartial. Firstly, he noted that, although he was a civilian person, he had been tried and convicted by the Military Assize Court. Secondly, he contended that the courts, being dependent on the will of the government, had been biased against him, because he was a close relative of the Javadov brothers who had been the leaders of an attempted *coup d'état* against the current authorities in 1995.

2. Again relying on Article 6 § 1 of the Convention, the applicant complained that he had been convicted arbitrarily. Specifically, he claimed that the conviction had been based solely on the inconsistent and contradictory statements of one witness. Despite his repeated requests, the domestic courts failed to duly examine his claims that this witness' incriminating statements had been extracted under duress during the pre-trial investigation.

3. Finally, the applicant complained under Article 6 § 2 that the presumption of his innocence had been violated, because the programme broadcasted by the state television had depicted him as being guilty of murder before the trial actually took place.

THE LAW

The Court notes that on 16 July 2004 the Registry invited the applicant to submit by 20 September 2004 any written observations he might wish to make in reply to the observations submitted by the Government.

In the absence of a reply from the applicant in due time, on 12 January 2005 the Registry repeated its request. The applicant again failed to reply.

On 30 August 2005 the Registry sent a registered letter to the applicant warning him that, should he fail to reply and submit the requested information, the Court might consider that the he does not wish to pursue the application. By a letter faxed on 30 November 2005, the applicant's representative informed the Court that the applicant wished to withdraw his application as he had been released from prison pursuant to the presidential pardon decree of 29 December 2003.

In these circumstances, having regard to Article 37 § 1 (a) of the Convention, the Court finds that the applicant has lost interest in his application and no longer intends to pursue it before the Court. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President