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

FIFTH SECTION

DECISION

Application no. 56716/16
Vusala TALIBOVA
against Azerbaijan

The European Court of Human Rights (Fifth Section), sitting on 22 February 2024 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Mattias Guyomar*, judges*,
and Sophie Piquet, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 56716/16) 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 21 September 2016 by a Russian national, Ms Vusala Raif qizi Talibova ("the applicant"), who was born in 1988, lives in Volgograd and was represented by Mr K. Bagirov, a lawyer based in Baku;

the decision to give notice of the complaints concerning Articles 8 and 13 of the Convention to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov, and to declare inadmissible the remainder of the application;

the parties' observations;

the fact that the Russian Government did not seek to exercise their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court);

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant is a Russian national who was born in Astara, Azerbaijan in 1988 and resides in Volgograd, Russia. In 2007 the applicant married a national of Azerbaijan in Volgograd and gave birth to two children in that town, who are also Russian nationals.

2. On 5 October 2012 the applicant entered the territory of Azerbaijan, together with her family.

3. On 14 May 2016 while travelling abroad with her family, the applicant was stopped at the border by custom officers for incompliance with residence permits as she stayed more than the allowed ninety days.

4. On 16 May 2016 the State Migration Service ("the SMS") fined the applicant to 400 Azerbaijani manats (AZN – approximately EUR 235 at that time) for unauthorized stay in Azerbaijan pursuant to Article 575.1.1 of the Code of Administrative Offences. The decision also stated that if the applicant refused to pay the fine, she would face removal and be banned from the territory of Azerbaijan for three years. On the same date the applicant signed a document stating that she had not been able to pay the fine and asking for assistance in her removal.

5. On 17 May 2016 the applicant and her family left Azerbaijan. The applicant alleged that they were going to Russia to visit her seriously ill mother and not travelling with the intention to settle there. According to the Government, they were travelling to Kharkov, Ukraine.

6. On 25 May 2016 the applicant challenged the decision of the SMS before the first instance court, submitting that the SMS had not taken into account the fact that she had been born in Azerbaijan, had married an Azerbaijani national and had two minor children.

7. The first-instance court dismissed the applicant's claims, referring to the decision of the SMS, the provisions establishing the responsibility for the aliens to secure registration at the place of residence in Azerbaijan and to the fact that the applicant had left Azerbaijan with her entire family. On 1 August 2016, the appellate court upheld this judgment.

THE COURT'S ASSESSMENT

8. Relying on Article 8 of the Convention the applicant complained that excluding her from the territory of Azerbaijan for a period of three years constituted a disproportionate interference with her right to respect for her private and family life as she was born in Azerbaijan and had many relatives there.

9. The Government considered that the measure at issue was governed by Article 575.1.1 of the Code of Administrative Offences and Article 79.2 of the Migration Code and justified under Article 8 § 2 of the Convention for public order.

10. The Court reiterates that it is for the Contracting States to control the entry and residence of aliens, as a matter of well-established international law and subject to their treaty obligations. However, their decisions must, in so far as they may interfere with a right protected under Article 8 § 1 of the Convention, be necessary in a democratic society. The Court's task accordingly consists in ascertaining whether the issue of a fine and a

temporary entry ban against the applicant, which constitutes an interference, struck a fair balance between the relevant interests, namely the applicants' right to respect for her private and family life, on the one hand, and the prevention of disorder on the other (*Dalia v. France*, 19 February 1998, § 52, *Reports of Judgments and Decisions* 1998-I).

11. The Court notes that the sanction had a basis in domestic law, and served a legitimate aim, namely the regulation of entrance and residence of aliens and consequently the prevention of disorder. As to the applicant's ties with Azerbaijan, the Court notes that although born in Azerbaijan, she never had the nationality of that State, had been living abroad since an unspecified date, had married abroad and had only entered Azerbaijani territory in 2012 at the age of twenty-four. She did not comply with the residence requirements in Azerbaijan and did not take any administrative steps for that purpose after the ninety days of stay initially allowed.

12. Moreover, the applicant did not demonstrate that there are obstacles or undue difficulties of integration for establishing her family life in her home country.

13. The Court also notes that, initially, the applicant was only ordered to pay a fine, with a warning that failing to do so might result in a ban on entry. There are no elements in the case file allowing to qualify that fine as excessive. Nor does the applicant content to a particular indigence. The duration of the entry ban was also limited to three years, which cannot be considered as unreasonably lengthy.

14. Ultimately, the applicant's situation is limited to a simple incompliance with basic administrative rules for entry and residence in the country. Taking into account the margin of appreciation which is left to Contracting States in such circumstances, the interference with the applicant's rights to respect for her private and family life can reasonably be considered "necessary in a democratic society (...) for the prevention of disorder" and does not appear disproportionate to the legitimate aim pursued. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

15. The applicant also complained, in substance, under Article 13 of the Convention, that the domestic remedies were ineffective. The Government considered that all the arguments of the applicant were answered with sufficient reasoning and individualised details by the national tribunals.

16. The Court, having declared inadmissible the substantive complaint under Article 8 of the Convention, concludes that the applicant has no arguable claim for the purposes of Article 13 of the Convention (compare *Kozaliev and Starchev v. Bulgaria* (dec.), no. 59845/14, § 44, 15 September 2020). It follows that this complaint must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 March 2024.

Sophie Piquet Acting Deputy Registrar	Stéphanie Mourou-Vikström President