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Meeting: 1348th meeting (June 2019) (DH)

Communication from the applicant (13/05/2019) in the cases of Ilgar Mammadov v. Azerbaijan (Applications No. 15172/13 and 919/15) (The appendices in Azerbaijani are available upon request at the Secretariat)

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1348e réunion (juin 2019) (DH)

Communication du requérant (13/05/2019) relative aux affaires Ilgar Mammadov c. Azerbaïdjan (requêtes n° 15172/13 et 919/15) (anglais uniquement).

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.
Subject: Execution of the judgments in the cases of Ilgar MAMMADOV v. Azerbaijan (application no. 15172/13) and Ilgar MAMMADOV v. Azerbaijan (2) (application no. 919/15)

the applicant’s representative Fuad Aghayev

13 May 2019

Communication under Rule 9.1

Dear Madam/Sir,

I am writing to inform you of certain factual developments relevant to the judgments of the European Court of Human Rights in respect of Application Nos. 15172/13 and 919/15, which have not resulted in their execution.

This communication deals first with the factual developments and then the failure to execute the two judgments.

I. Factual developments

On 28 March 2019, responding to the defence’s cassation complaint about the Shaki Court of Appeals judgment of 13 August 2018, the Criminal Chamber of the Supreme Court of the Republic of Azerbaijan delivered another judgment on the Applicant’s case.

In this judgment, the Supreme Court only reduced and limited the applicant’s punishment to the term he already served in prison, and by default, to a long-term prohibition to run for an elected office.

However, as regards all the other parts of the lower courts’ decisions, the judgment in this cassation instance changed nothing.

The applicant received the text of the Supreme Court’s judgment only on 8 May 2019.

II. Regarding the execution of the ECHR 22 May 2014 judgment (application no 15172/13)

Neither the Supreme Court in its judgment of 28 March 2019 nor any of the lower courts in judgments rendered by them have ever recognized that the imposition of the measures taken against the Applicant were contrary to Articles 5(1)(c) and 18 of the Convention as they were
imposed without there ever being any reasonable suspicion of the commission of an offence and had an improper purpose.

Thus, in paragraph 4 of page 17 of its judgment, the Supreme Court merely acknowledged that it was “aware of the fact that calls for release of the accused person Ilgar Mammadov have been reflected in several resolutions of the Committee of Ministers concerning this case.” This is at best a vague allusion to the fact that, starting from December 2014, the Committee of Ministers had called upon the Government to release the Applicant without delay.

Indeed, the resolutions and decisions of the Committee of Ministers did not merely “reflect” unattributed calls for release of the applicant since it was the Committee itself that called for the Applicant’s release. By distorting the essence of the Committee’s decisions and resolutions the Supreme Court failed to recognize the obligation under Article 46 of the Convention and article 3 of the Statute of the Council of Europe regarding the execution of the Court’s judgment, which has been referred to in some of the said decisions and resolutions.

In the same paragraph of its judgment, the Supreme Court indicated that

“having taken into account those [calls], as well as the facts that he [the applicant] has already served the most part his imprisonment sentence, that he has not committed any actions in violation of the law during his prison time and during the probation period, and that there have been no instances of evasion from duties imposed on him by the court, the Supreme Court holds that the 6 years imprisonment sentence given to the convict Mammadov Ilgar Eldar oglu under Article 220.1 of the Criminal Code of the Republic of Azerbaijan should be reduced to 5 years; the said punishment should be partially aggregated – in line with Article 66.3 of the Criminal Code – with the punishment he had been given in the sentence under Article 315.2 and thus, his total punishment should be kept at 5 years 6 months and 9 months, and Ilgar Mammadov should be considered as someone who has fully served his punishment because he has already spent the said time in prison”.

This excerpt clearly demonstrates that the reduction of the Applicant’s punishment by the Supreme Court was based on his behaviour in prison and during probation. The Supreme Court thus failed to demonstrate how the reduction was related to the Committee’s decisions and resolutions.
There has thus been no recognition in the Supreme Court’s judgment of the violations of the Convention that had been found by the European Court.

Furthermore, the Supreme Court did not formally quash the local courts’ decisions concerning the Applicant’s arrest and pre-trial detention, notwithstanding that was possible under Article 455 – 457 of the Code of Criminal Procedure and that this would have shown respect for the judgment of the European Court.

The Applicant’s conditional release in August 2018 and subsequent reduction of his punishment term on the said basis in March 2019 have thus not erased the consequences of the violation of Article 18 taken in conjunction with Article 5.

Moreover, there has never been any acknowledgement by the Government that the deprivation of liberty to which the Applicant was subject was for the entirely improper purpose of silencing or punishing him for having criticized it and had the unjustified effect of engaging the courts in political activity.

In these circumstances, any suggestion that the measures referred to by the Government are in line with the Committee of Ministers’ decisions and Interim Resolutions is totally without foundation. The position remains that the Government has done nothing to eliminate the consequences of the violation of Article 18 taken in conjunction with Article 5 or to acknowledge that the deprivation of the Applicant’s liberty was without any reasonable suspicion and had been effected for an entirely improper purpose.

Hence, there continues to be a failure to take all the necessary individual measures required for the execution of the 2014 judgment of the Court.

Finally, it should be recalled that the object of the measures imposed on the Applicant was, as the European Court found, to silence the political activities of the Applicant and yet the effect of the Supreme Court’s judgment of 28 March 2019 is to perpetuate their effect as it effectively bans him, as a former convict, from running for an elected public office till 13 August 2024.
As a result of the prolonged non-execution of the judgment, the Applicant, an opposition politician, has already had to miss at least the general parliamentary elections of 2015, partial parliamentary elections of 2016, and the snap presidential elections of 2018. The further delay in addressing the violation of Article 18 taken in conjunction with Article 5 of the Convention will thus only serve to render worthless the judgment of the Court.

III. Regarding the execution of the ECHR 16 November 2017 judgment (application no 919/15)

The reasons given by the Supreme Court for the reduction of the punishment of the Applicant – set out above – are essentially concerned with his good behaviour. None of them relates to the findings of the European Court that his conviction was founded upon numerous and serious violations of Article 6. Indeed, the judgment reaffirms the propriety of his conviction as found by the lower courts in disregard of those findings.

There has thus been no attempt to consider whether or not the Applicant’s conviction could have been justified if he had been tried in a manner consistent with the requirements of Article 6 of the Convention.

Furthermore, the Government has not paid the just satisfaction awarded to the Applicant in the Court’s judgment.

Faithfully yours,

Fuad Aghayev