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Communication from the authorities of Azerbaijan (02/12/2022) concerning the case of CHIRAGOV AND OTHERS v. Armenia (Application No. 13216/05)

Information made available under Rule 8.2a 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 : 1451e réunion (décembre 2022) (DH)

Communication des autorités d'Azerbaidjan (02/12/2022) relative à l'affaire CHIRAGOV ET AUTRES c. Arménie (requête n° 13216/05) ***[anglais uniquement]***.

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

COMMUNICATION OF THE GOVERNMENT OF AZERBAIJAN
CASE OF CHIRAGOV AND OTHERS v. ARMENIA

Application no. 13216/05, Judgment on merits of 16.06.2015
Judgment on just satisfaction of 12.12.2017

A. CASE DESCRIPTION

I. Subject of the case

The case concerns six Azerbaijani nationals who were forced to flee from their homes in the Lachin district of the Republic of Azerbaijan, when the district came under military attack on 17 May 1992, during the active military phase of the conflict between Armenia and Azerbaijan (1992-94).

II. Summary of the relevant facts

Background of the case

The case originated in an application (no. 13216/05) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms by six Azerbaijani nationals, Mr Elkhan Chiragov, Mr Adishirin Chiragov, Mr Ramiz Gebrayilov, Mr Akif Hasanof, Mr Fekhreddin Pashayev and Mr Qaraca Gabrayilov on 6 April 2005. The sixth applicant died in June 2005 and his son, Mr Sagatel Gabrayilov, pursued the application on his behalf.

The applicants stated, in particular, that they were prevented from returning to the district of Lachin, located in a territory occupied by the respondent Government, and thus unable to enjoy their property and homes there, and that they had not received any compensation for their losses. They submitted that this amounted to continuing violations of Article 1 of Protocol No. 1 and of Article 8 of the Convention. Moreover, they alleged a violation of Article 13 of the Convention in that no effective remedy was available in respect of the above complaints and that they were subjected to discrimination by virtue of ethnic origin and religious affiliation in violation of Article 14 of the Convention.

All six applicants lived in either the villages of Lachin district or the town of Lachin until their forcible displacement in May 1992. Since then, the applicants out of necessity lived in Baku or elsewhere in Azerbaijan as internally displaced persons, as their access to ancestral homes were denied by the respondent Government.

The Republic of Azerbaijan intervened as a Third Party in this case.

III. Violation found

The Court dismissed the respondent Government's objection concerning the jurisdiction of Armenia over "Nagorno-Karabakh" and the surrounding territories. The Court concluded that Armenia, from the early days of the Nagorno-Karabakh conflict, had a significant and decisive influence over the so-called "NKR", that the two entities were highly integrated in virtually all important matters. In other words, the so-called "NKR" and its administration survived by virtue of the military, political, financial and other support given to it by Armenia. Consequently, Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin and that the matters complained of therefore came within the jurisdiction of Armenia for the purposes of Article 1 of the Convention (§ 186, 187).

The Court further held that the applicants were denied access to their property and homes by the respondent Government, which constituted unjustified interferences with their rights to property and rights to respect for private and family life, and had not been provided with any remedy capable of providing redress in this respect.

Subsequently, in a judgment delivered on 16 June 2015, the Court held that there had been continuing violations of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention from 26 April 2002 when the Convention came into force in respect of the Republic of Armenia.

In a separate judgment on just satisfaction, rendered on 12 December 2017 pursuant to Article 41 of the Convention, the Grand Chamber held that the respondent state was to pay each applicant €5,000 in respect of pecuniary and non-pecuniary damages and GBP 28,642.87 in respect of costs and expenses.

B. Execution Process

The Committee of Ministers examined the execution of this case and adopted the decision during its 1280th meeting (DH) in March 2017. It invited the authorities to present an action plan on the ways and means to execute this judgment. This case was later examined by the Committee of Ministers at its 1362nd meeting (DH) in December 2019. Several subsequent examinations in the Committee were suspended upon the request of the respondent state.

The respondent Government has not submitted an action plan reflecting the predictable prospects for the execution of the judgments in *Chiragov case*.

The communication submitted by the Government of Armenia on 2 December 2019 (DH-DD(2019)1437) provides no substantial information on measures taken or possible actions envisaged for achieving the execution of the judgment, thus does represent a plan of action. Instead, the communication contains disorderly compilation of over-recycled propaganda against Azerbaijan, the distorted context of the conflict and the repetitive arguments, which was

effectively rejected by the Court in its principal judgment. The respondent Government suggested that it was not “the immediate addressee” of the instant case and attempted to "delegate" its conventional obligation to the puppet regime. Furthermore, it excluded the possibility of execution of the judgment before the resolution of the conflict. Even though the Court was well aware of ongoing conflict situation when adjudicating on the case and it did not consider then existing situation as justifying the continuous violations of the applicants’ Conventional rights.

The same approach was reaffirmed by the respondent Government in its recent submission of 17 November 2022 (DD-DH(2022)1263), despite the fundamental change of circumstances and the consultations held with the Secretariat. This submission replicates unfounded claims, which in respondent Government's view "objectively hinders the execution of the case", while failing to indicate its genuine intention to take any action in this respect.

It should be noted that the Republic of Armenia undertook to return Lachin district to the Republic of Azerbaijan on 1 December 2020 in compliance with the Trilateral Statement of the leaders of Azerbaijan, the Russian Federation and Armenia of 10 November 2020. The Respondent Government thus further acknowledged the control and occupation of the Lachin district and other territories of Azerbaijan. Moreover, Armenia returned the city of Lachin, and its Zabukh and Sus villages to Azerbaijan on 25 August 2022. Against this background and bearing in mind incontestable findings of the Court, the attempt of the respondent Government to link the execution process with the recent border incidents between the two states is unacceptable.

Therefore, the both of above submissions read together should be considered as tantamount to a refusal of the respondent state of its obligation to execute the Court’s judgments in the *Chiragov case*.

Respectively, the Government of Armenia is under obligation to submit an Action Plan where it acknowledges its role and responsibility for the human rights violations in this case as a respondent state and indicates the measures it envisages to take within the reasonable timeframe to fully remedy these violations.

The Azerbaijani authorities further recall that the *Chiragov case* has not been examined or decided upon by the Committee of Ministers for the last several years, the only decision adopted by the Committee concerning this case dates back to March 2017, prior to the just satisfaction judgment. The Committee of Minister should therefore pay closer attention to the execution of the Court’s judgments in *Chiragov case* through its regular and careful examination.

C. INDIVIDUAL MEASURES

I. Just Satisfaction

In the judgment on just satisfaction of 12 December 2017, the Court held that the applicants were entitled to an award of pecuniary damage for the loss of income from their land

in Lachin and their increased living expenses in Baku (from 26 April 2002 onwards), as well as for non-pecuniary damage caused by their suffering and distress. Subsequently, the Court awarded each applicant EUR 5,000, to cover all heads of damage and GBP 28,642.87 in respect of costs and expenses.

Notwithstanding its unconditional obligation to pay the just satisfaction within three months, which expired on 12 March 2018, up to the present moment the respondent Government failed to pay the just satisfaction to the applicants. Furthermore, it has not committed to proceed with payment in a reasonably foreseeable future.

The applicants who have lived through enormous sufferings as internally displaced persons during the long years of occupation and continue to live in unfavorable household conditions still cannot benefit from the compensation awarded by the Court.

The Azerbaijani authorities assert that the consultations held between the Secretariat and the Armenian authorities have not yield any tangible result thus far. The respondent Government has not given its consent to sign the Memorandum of Understanding submitted by the Secretariat in July 2022, setting the terms and conditions for payment of just satisfaction. The Armenian authorities have not even demonstrated an explicit will to sign the MoU and deliver the payment in a predictable future.

The draft MoU defines the modalities of payment to be facilitated by the Council of Europe and conditions for the release of the funds to the applicants, which entails the simultaneous payment to the applicant in the *Sargsyan case.* Consequently, the unjustified suspension in the execution in the *Chiragov case* causes an unwanted delay in the execution of the *Sargsyan case*.

II. **Other individual measures**

It is a fundamental principle of the European Convention system that the primary aim of individual measures is to achieve *restitutio in integrum*, that is, to put an end to the breach of the Convention and make reparation for its consequences in such a way as to restore, as far as possible, the situation existing before the breach. Thus, the respondent state is required to adopt feasible, timely, adequate and sufficient measures that will ensure the maximum possible reparation for the violations found.

It is recalled that when the Court delivered the principal judgment, it was impossible to estimate the situation of the applicants' homes and property due to ongoing occupation. The respondent Government in its observations submitted that the applicants' lands had been allocated to other individuals in 2000 and 2001, without providing sufficient proofs about the conditions of the applicants' property. Therefore, the Court held that there was no indication that the applicant's rights to land and to houses, which constituted "possessions" within the meaning of Article 1 of Protocol No.1, had been extinguished, and accordingly, they still held rights to real property in Lachin. In the just satisfaction judgment, when deciding on the scope of pecuniary

damage suffered by the applicants, the Court held that the applicants had not been deprived of their property, compensation could not be given for the loss of land and houses as such, but only for the loss related to the applicants' inability to use and enjoy the property.

After de-occupation of Lachin district the applicants had a visit to the city of Lachin and the surrounding villages of Aghbulag, Chirag and Chiragli. It was revealed during the visit that their homes were completely destroyed and the applicants have irretrievably lost their homes and property. Furthermore, their return to Lachin in the near future remains impossible due to the complete destruction of houses and infrastructure, also due to the heavy mine contamination.

Respectfully, the *restitutio in integrum* for the applicants in case *Chiragov and others v Armenia* would also entail the appropriate compensation or another form of just reparation for the wrongful destruction the applicants' homes and property by the respondent state.

Other individual measures in this case are interrelated with the general measures.

C. General Measures

The Court stressed that the ongoing peace negotiations did not absolve the respondent Government from taking other measures. It indicated that "pending a comprehensive peace agreement it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment" (§ 199).

The Court held that guidance as to the measures to be taken by the authorities to protect the applicants' property rights should be derived from the relevant international standards, in particular the United Nations' Pinheiro Principles and Resolution 1708(2010) of the Parliamentary Assembly of the Council of Europe.

The respondent Government has not set up a property-claims mechanism or taken any other measure so far which could benefit persons in the applicants' situation.

While the establishment of a property-claim mechanism may be seen as a general measure to prevent similar violations in the future, it appears to be necessary and crucial for the implementation of individual measures in the present case. It could have particular importance for restoring the applicants' property rights, including also by identifying the scope and size of just reparation.

The Azerbaijani authorities are in agreement with the proposal developed by the Secretariat for identifying the category of persons entitled to bring claims before the property-claims mechanisms indicated by the Court in both the *Sargsyan* and *Chiragov cases*.

The Azerbaijani authorities, in particular, accept that in the context of the *Chiragov case* "others in their [applicants] situation", entitled to apply to a property-claims mechanism, shall include Azerbaijani citizens (personal scope) who, like the applicants, formerly lived in the Lachin district and other formerly occupied territories (geographical scope) and forced to abandon their homes and properties during the active military phase (1992-94) of the conflict (temporal scope).

However, the consultations between the Secretariat and the respondent Government concerning the possible elements of the property-claims mechanism do not seem to produce any result to date, as the Armenian authorities appear to disagree with the possible general measures and overall consider it "difficult to contemplate the execution of the judgment" in *Chiragov case*.

D. CONCLUSIONS

According to Article 46, paragraph 1, of the European Convention on Human Rights the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. The respondent Government acting against with its Conventional obligations have not taken any measures and have not even demonstrated a genuine intention to take any action in order to execute the Court's judgements in *Chiragov case*. On the contrary, the Armenian authorities continue introducing unfounded pretext to escape its responsibility under this judgment.

Seven years passed since the delivery of the Court's principal judgment and there is an urgent and compelling need to make tangible progress in the execution of the case *Chiragov and others v Armenia*.

The Government of Azerbaijan respectfully request the Committee to urge the respondent State to take the following measures in order to achieve full and fair execution of the present judgment:

- Sign the Memorandum of Understanding and ensure full and prompt payment of just satisfaction and due interest to each applicant and their legal representative as set in the Court's judgment on just satisfaction of 12 December 2017;
- Establish a property-claims mechanism, as required by the Court, to bring the applicants closer to *restitutio in integrum,* as well as benefit other persons in the applicants' situation*;*
- Award compensation for the wrongful destruction of homes and property resulting from its acts and/or omissions;
- Inform the Committee about any developments in the implementation of this case by submitting substantive action plans and reports.

The Azerbaijani authorities further request the Committee to adopt a substantive decision accurately reflecting the status of [non]execution of this judgment during the debates at its 1451st meeting (DH) in December 2022 and to re-examine this case at its DH meeting in June 2023.