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Contact: John Darcy
Tel: 03 88 41 31 56

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Meeting: 1362nd meeting (December 2019) (DH)

Communication from the applicant (14/11/2019) in the cases of Aliyev v. Azerbaijan (Ilgar Mammadov group) (Application No. 68762/14)

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 : 1362^e réunion (décembre 2019) (DH)

Communication du requérant (14/11/2019) relative à l'affaire Aliyev c. Azerbaïdjan (groupe Ilgar Mammadov) (requête n° 68762/14) (**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.



**DGI – Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR
F-67075 Strasbourg Cedex
France**



E-mail: dgl_execution_just_satisfaction@coe.int

dgl-execution@coe.int

Sent by email

14 November 2019

Re: Aliyev v. Azerbaijan, Appl. nos. 68762/14 and 71200/14 (examined as part of Ilgar Mammadov group) – submissions pursuant to Rule 9(1) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments

Dear Sir/Madam,

With this submission, we would like to provide our comments on the Action Plan of the Government of Azerbaijan of 20 September 2019 relating to individual measures in the case of Mr Aliyev, as well as the latest updates on his situation.

In its respective judgment, the Court ordered the Government to pay Mr Aliyev EUR 20,000 in respect of non-pecuniary damages and EUR 6,150 in costs and expenses, plus simple interest for any delays. In its Action Plan, the Government states that it 'proceeded with payment of just satisfaction to all applicants in this group' (page 2). Mr Aliyev has not been informed about the payment of compensation by the authorities in this case, or several other ECtHR cases where payments are pending.

After his release in March 2016, as his bank accounts remained frozen, Mr Aliyev opened a new bank account at the International Bank of Azerbaijan Sumgayit branch used exclusively to receive payments from the authorities relating to ECtHR cases where Mr Aliyev was an applicant or acted as a legal representative and provided the account details to the Office of the Government Agent. Several payments have been made to this account by the authorities, however, without any

information as to which cases these payments are related. On 22 September 2019, Mr Aliyev sent an inquiry by email to a representative of the Office of the Government Agent requesting to provide information on the status of pending payments, which remains unanswered to date (Annex 1).

In November 2019, during his visit to the bank, Mr Aliyev received a bank statement indicating that various sums were transferred to his account by the authorities between 21 June 2019 and 30 October 2019 (Annex 2). It would appear to be 8 payments totalling EUR 28,674.26, however, there is no way of knowing which cases they relate to as no further details have been provided to the bank or the applicant.

We therefore request the CM that the Government is asked to confirm, which cases each payment made to Mr Aliyev relate to.

The Department for Execution of Judgments of the European Court of Human Rights is further reminded that in February 2019, Mr Aliyev informed the Department about all the cases in which he was an applicant or acted as a legal representative where the compensation or legal costs and expenses have not been paid by the authorities at the time (Annex 3).

The Government further asserts in its Action Plan that the bank accounts of Mr Aliyev and his organisation, the Legal Education Society (LES), were only frozen for the duration of the prosecution (page 2). As a result, on 7 November 2019, the applicant went again to a branch of the Bank Respublika in Sumgayit, which holds his personal bank account, and to the Sabail branch of the International Bank of Azerbaijan, which holds the LES bank account, in order to inquire about the status of the bank accounts which were frozen by the Sabail District Court on 7 July 2014. Mr Aliyev was told by bank officials (at both banks) that they had not received any information from the Prosecutor's Office regarding the release of the bank accounts, and therefore he was again denied access to any of the monies in his accounts. Mr Aliyev notes that he was given the same information during his earlier attempts to inquire about the status of the bank accounts after his release in 2016 and also in 2017. He further notes that, if the Government were correct in stating that his bank accounts have now been released, he should (in accordance with the domestic law) have been informed by the Prosecutor's Office about the release of his accounts at the time, i.e.

when the investigation stage was completed, as stated by the Government in its Action Plan (i.e. on 29 December 2014 when the indictment was drawn and the criminal case against Mr Aliyev was sent to trial).

In spite of the Government's claims to the contrary, the fact is that the applicant's bank accounts remain frozen and he is still denied access to any monies held in the accounts. The Government should therefore be required to provide the CM and the applicant with the requisite documentation confirming the date (or dates) when the bank accounts were released, as well as copies of the instructions to the banks to that effect. It should also provide information as to the monies currently held in each of the bank accounts.

In its Action Plan, the Government states that all documents seized from Mr Aliyev were returned to Mr Aliyev's lawyer on 14 October 2014 and 12 November 2015, and that his office was unsealed in September 2019. The Government refers to 'procedural records enclosed', but there are no such documents enclosed with the Action Plan.

Mr Aliyev notes that some of the documents were indeed returned to his lawyer on 14 October 2014 and a 2-page protocol of the documents was provided. However, he is not aware of any documents having been returned on 12 November 2015 and no official record of any provision of documents on that date has been provided by the authorities to his lawyer (Mr Aliyev was still in prison at that time). Mr Aliyev further notes that a number of documents held at the Prosecutor's Office were returned to him on 13 September 2019, the same day when he was allowed access to his office (Mr Aliyev documented the process in a video, which can be provided upon request). However, he does not know if all remaining documents were returned on 13 September 2019 as no detailed protocols, as required by the domestic law, were drawn up by the Prosecutor's Office either on the date when they were seized, or on the date they were returned.

We welcome confirmation that the Court's judgment in Mr Aliyev's case was sent to the Supreme Court for examination under Articles 455 and 456 of the Code of Criminal Procedure. We note that the same legal provisions indicate that the Plenum of the Supreme Court shall review the case no later than 3 months after the receipt of the Court's decision, in this case, by 12 December 2019. To date, the applicant has not been informed by the authorities about the referral of the case or any

scheduled proceedings before the Plenum of the Supreme Court (Article 80 of the Law on Courts and Judges and Article 457 guarantee the defendant's participation in such cases).

During its upcoming human rights meeting in December 2019, the CM should request the Government to provide an update on the status of the proceedings before the Supreme Court, together with the copies of all relevant case documents, including a copy of the decision of the Supreme Court to examine Mr Aliyev's case. The Government should also inform the CM if Mr Aliyev has been notified about the proceedings.

Furthermore, it must be ensured that the examination is conducted in a fair and transparent manner, in line with the European fair trial standards. It is also recalled that in its decision taken at the DH meeting on 23-25 September 2019, the CM decided that

'...the above findings of the European Court make it clear that Azerbaijan is required rapidly to eliminate all the remaining negative consequences of the criminal charges brought against each of the applicants, principally by ensuring that the convictions are quashed and deleted from their criminal records' (para 5).

Yours faithfully,



Philip Leach

Ramute Remezaite

Legal representatives of the applicant

Annexes

Annex 1. Mr Aliyev's inquiry to the Office of the Government Agent, 22 September 2019

Annex 2. Copy of a bank statement of 7 November 2019

Annex 3. Mr. Aliyev's letter to the Department of Execution of Judgments of 12 February 2019

DGI - Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR

Just Satisfaction Section

F-67075 Strasbourg Cedex
FRANCE

12 February 2019

Dear Sir/Madam,

The Government continues to unlawfully deny paying me compensations in my own cases as well as fees for the legal assistance prescribed by the ECHR's judgments in other cases where I am legal representative of applicants.

I. Compensation for non-pecuniary damage

I am one of the applicants in the cases of *Soltanov and Others v. Azerbaijan* (application no: 66684/1; judgment of 16 June 2016) and *Hajibeyli and Aliyev v. Azerbaijan* (applications: no. 6477/08, 10414/08; judgment of 19 April 2018).

In the *Soltanov* case the Court established compensation EUR 10,000 for non-pecuniary damage and EUR 100 for costs, in *Hajibeyli and Aliyev* case EUR 7,000 for non-pecuniary damage.

To this day, from the above amount (EUR 17,100), the Government transferred EUR 14,426.69 to my bank account.

EUR 1,500 - 18.04.2017
EUR 1,500 - 19.05.2017
EUR 1,500 - 21.06.2017
EUR 2,000 - 24.07.2017
EUR 2,000 - 16.08.2017
EUR 4,219.13 - 26.12.2018
EUR 1,707.56 - 24.01.2019
total: EUR 14,426.69

As can be seen, 2 years 8 months passed from the adoption of the first judgment of the Court, and 10 months from the second judgment. However, the Government is ignoring its commitments related to the execution of the decisions of the European Court and have not fully paid compensation.

In its judgments the Court holds that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the compensation. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. In some cases, the Government paid a certain fine to applicants in the amount of up to EUR 800 for late payment of compensation. But I have not been paid any amount for delayed compensation.

Also, I did not receive compensation (EUR 20.000) and costs and expenses (EUR 6,150) in case of *Aliyev v Azerbaijan* (applications nos. 68762/14 and 71200/14, judgment of 20 September 2018).

II. Legal fee

Indicated below are the cases in which the Government refuses to pay my fees for legal assistance established by the Court. The size of unpaid fees in the above cases is EUR 38,500.

Heydarova v. Azerbaijan

application: no. 59005/08

judgment: 18 December 2012

costs and expenses: EUR 500

Soltanov and Others v. Azerbaijan

applications: no. 30362/11, 30581/11, 30728/11, 30799/11, 66684/12

judgment: 16 June 2016

costs and expenses: EUR 5,000 (to all the 5 applicants jointly)

Gaya Aliyev and Others v. Azerbaijan

applications: nos. 29781/11, 29808/11, 30372/11, 30473/11, 30478/11, 30487/11

judgment: 16 June 2016

costs and expenses: EUR 6,000 (to all the 6 applicants jointly)

Mammadli and Others v. Azerbaijan

applications: nos. 2326/11, 8055/11, 30750/11

judgment: 30 June 2016

costs and expenses: EUR 3,000 (to all the 3 applicants jointly)

Samadbayli and Others v. Azerbaijan

applications: nos. 36821/11, 37656/11, 37661/11, 37740/11, 37866/11, 38636/11, 38885/11, 41066/11, 42345/11, 42360/11

judgment: 13 April 2017

costs and expenses: EUR 10,000 (to all the 10 applicants jointly)

Hajili and Others v. Azerbaijan

applications: nos. 44699/13, 47040/13, 65283/13

judgment: 29 June 2017

costs and expenses: EUR 3,000 (to all the 3 applicants jointly)

Panahli v. Azerbaijan

application: no. 48255/11

judgment: 19 October 2017

costs and expenses: EUR 1000

Hajibeyli and Aliyev v. Azerbaijan

applications: nos. 6477/08, 10414/08

judgment: 19 April 2018

costs and expenses: EUR 2,500

Non-payment of the compensations and legal aid fees (or their delay or payment in parts) by the Government is a clearly deliberate attempt to ensure that lawyers, journalists, activists, human rights activists, politicians encounter maximum material problems, and lawyers are discouraged from applying to the Court. At the same time, the authorities are blocking all sources of finance for those who are involved in a work promoting and protecting values embedded in the European Convention on Human Rights.

I repeatedly gave requests to the person who is responsible for the execution of payments, authorized representative of Azerbaijan in the ECHR, but I could not get answers about the reasons for the delay in payments.

Due to the above-mentioned facts, I ask the Committee of Ministers to take measures to ensure the execution of judgments of the Court in Azerbaijan as soon as possible.

Yours faithfully,



Intigam Aliyev