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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Communication from the authorities (08/11/2021) concerning the Mammadli group of cases v. Azerbaijan (Application No. 47145/14).

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 : 1419e réunion (décembre 2021) (DH)

Communication des autorités (08/11/2021) relative au groupe d'affaires Mammadli c. Azerbaïdjan (requête n° 47145/14) ***[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.

İNSAN HÜQUQLARI ÜZRƏ AVROPA MƏHKƏMƏSİ YANINDA
AZƏRBAYCAN RESPUBLİKASININ SƏLAHİYYƏTLİ NÜMAYƏNDƏSİ
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8/2-2808

5 November 2021

BY E-TRANSMISSION ONLY

Subject: Mammadli group (application no. 47145/14 and others)

Dear Madame,

It is my pleasure to write you to update on further developments in the execution of the Court's judgments in the above group of cases.

In this connection, please find enclosed the Action Report on general measures concerning the above group of cases, in particular on strengthening the capacity of the judiciary to function independently and to protect themselves from external influence.

Yours faithfully,

Çingiz Əsgərov

Encl.

Mammadli group (application no. 47145/14 and others)

Application	Case	Judgment of	Final on
47145/14	MAMMADLI	19/04/2018	19/07/2018
48653/13+	RASHAD HASANOV AND OTHERS	07/06/2018	07/09/2018
68762/14+	ALIYEV	20/09/2018	04/02/2019
64581/16	NATIG JAFAROV	07/11/2019	07/02/2020
63571/16	IBRAHIMOV AND MAMMADOV	13/02/2020	13/06/2020
30778/15	KHADIJA ISMAYILOVA (No. 2)	27/02/2020	27/06/2020
68817/14	YUNUSOVA AND YUNUSOV (No. 2)	16/07/2020	16/10/2020

General Measures on strengthening the capacity of the judiciary to function independently and to protect themselves from external influence

The independence of the judiciary is enshrined in the Constitution of the Republic of Azerbaijan. The irremovability and tenure of judges is one of the constitutional safeguards of the judicial independence. These guarantees have also been legislatively strengthened.

The Presidential Decree of 3 April 2019 “On deepening reforms in the judicial-legal system” serves as a “road map” for the future development of the legal system of the country, in particular laying the groundwork for strengthening the judicial independence.

Now, a statutory age limit of 66 years has been set for all judges except the justices of the Supreme Court who discharge their duties until the age of 68. Furthermore, the discretion to amend the statutory age limit has been significantly curtailed. Previously, judges were appointed for 5 or 10 years depending on the courts they would serve on. Moreover, a probationary period for the newly appointed judges has been reduced from 5 to 3 years.

Recently, a draft bill has been created in relation to the formation of additional effective mechanisms in this area, including toughening penalties for obstructing the administration of justice, for exerting any unlawful external pressure on the court's functioning and for the contempt of court.

As an additional instrument aimed at preventing unauthorized external interference, judges have a new recourse allowing them to inform the Judicial-Legal Council directly about such instances. In this regard, a “hotline” has been set up in the Judicial-Legal Council aimed at ensuring the independence of judges and preventing interference in the work of the courts on the basis of the recommendations outlined in the Presidential Decree.

The Judicial-Legal Council of Azerbaijan as an independent body of judicial self-governance plays an important role in ensuring the independence of the judiciary. Today, the competence of the Judicial-Legal Council of Azerbaijan includes all the key issues concerning the judiciary, particularly the selection of judges, evaluation of their performance, career advancement and disciplinary matters.

These past few years, new progressive changes have been made to the local legislation modelling the best international practices. The Judicial-Legal Council acquired new powers as a result of these changes. Now, it is charged with important tasks such as making proposals on the appointment of court presidents and all other judges. In addition, the Judicial-Legal Council determines the territorial jurisdiction of the courts, provides professional legal opinion on the allocation of the budget to the courts of first instance and the courts of appeal, and most importantly it monitors and prevents external interference with the work of judges.

According to the recent legislative changes, budgets allocated for the judiciary must first be discussed and agreed with the Judicial-Legal Council. As a statutory safeguard, the Judicial-Legal Council's budget cannot be less than it was during the previous year. Overall, it should be noted that the courts' budgets for the previous year have been increased and accordingly the salary of the judges has also increased by 10%. The Presidential Decree envisages even further significant increases in the salaries of judges with a view of strengthening their independence.

The social protection of the court staff is equally important for the administration of justice and the efficiency of its work. Therefore, the recent legislative changes also provide for a mechanism of allocating certain public funds from the court fee payments to the strengthening of the social protection of the court staff.

Selection of judges in Azerbaijan is held with extremely high standards. This has led to strengthened judicial independence in a number of ways. Individuals willing to become judges firstly go through a stringent examination process, whereby they need to pass a number of stages before successfully becoming judges. Afterwards, they are scrupulously trained in order to uphold the high name of a judge in their work. The work of the judges is also constantly being monitored by the Judicial-Legal Council. The Council evaluates their work in order to determine promotions, replacements, as well as disciplinary action for judges. There is also continuous training and education on issues related to law and justice and effective cooperation with the public to improve the confidence and trust in the administration of justice.

Information about the recent changes to the Code of Civil Procedure

The changes to the Code of Civil Procedure of the Republic of Azerbaijan (hereinafter the “Code”) were introduced in accordance with the instructions and recommendations set forth in the Decree of the President of the Republic of Azerbaijan "On deepening reforms in the judicial system" from 3 April 2019. The aim of these reforms is to accelerate the process of the formation of the judiciary capable of meeting modern requirements taking advantage of the application of modern information technologies in the judicial proceedings and ensuring more effective use of the judicial mechanisms envisaged by law.

As a result of careful consideration and analysis of the proposals from the Supreme Court of the Republic of Azerbaijan, appellate courts and courts of first instance, as well as other organizations, progressive provisions have been developed in order to improve the legislation of civil procedure. Justices of the Supreme Court, who are the members of the working group, have participated in the deliberations held at the Milli Majlis (Parliament) of the Republic of Azerbaijan and answered the questions of the representatives of the Milli Majlis. It has been noted that the draft envisages conceptual innovations that significantly alter the philosophy of the Code.

The following remarks shall describe the changes to the Code and elucidate on their significance within the framework of judicial procedures in civil matters.

“Electronic Court” (e-Court) Information System and the Use of Video Conferencing

One of the most significant amendments is aimed at the implementation of the “e-Court” information system in Azerbaijan. With the purpose of ensuring a gradual transition to electronic civil proceedings, without simultaneously restricting the access of citizens to courts, certain changes have been made to the Code. According to the amendments to Article 10-1.3 of the Code, in addition to commercial disputes, sending and receiving applications, complaints and other documents in civil proceedings, as well as delivery of court documents to the court and parties in the proceedings shall be carried out through a virtual cabinet created within “e-Court” information system. In accordance with Article 10-1.9, respective courts are responsible for entering the names, addresses, emails and phone numbers of the parties into the “e-Court” information system. Furthermore, not submitting certain documents (see below) to the “e-Court” information system has become a ground

for returning an application form. These changes will work towards ensuring a seamless transition to an extensive use of the “e-Court” in the courts of Azerbaijan.

Similarly, the changes to the Code have implemented the use of video-conferencing, by allowing it in lieu of in-person proceedings. The Code enumerates the parties that have the right to utilize video-conferencing, as well as the circumstances in which video-conferencing is permissible in the new Article 10-2 of the Code. The list of the parties, as well as the circumstances in which video-conferencing is allowed is expansive and is meant to open way for a wide use of the option. The new stage of the expansion of the implementation of the "e-Court" information system will provide faster and easier exchange of documents and other benefits for its users.

Pre-Trial Stage of the Court Proceedings

The importance of the pre-trial proceedings has been significantly strengthened through the changes made to the Code. The form for a claim to a court now requires inclusion of the facts and circumstances to which it refers as the basis of its claim, the list of evidence supporting them and the attached written evidence. This will significantly increase the requirements from parties in making an application to the courts, which shall in turn require more thorough preparation and ultimately increase the quality of justice in all stages of judicial procedures.

The changes to the Code have limited the possibility of the following procedural actions (with certain exceptions) to the pre-trial stage:

- replacement of the defendant (plaintiff) with the real defendant (plaintiff);
- joinder of another defendant;
- change of the basis or subject of the claim;
- increasing or decreasing the amount of the claim;
- claims against one or both parties by third parties who have made an independent claim on the subject matter of the dispute;
- submission of evidence;
- filing a counterclaim (filing a counterclaim in court on the grounds provided for in Article 156.1.3 of this Code shall not be allowed without exception).

These changes shall have the effect of preventing unnecessary delays in the court proceedings that may be attributed to actions specified above. However, the Code remains flexible in allowing these to be used in certain conditions specified in the Code.

Additionally, the time limits (deadlines) for procedures prior to the court hearing have been changed. For example, an application to commence a lawsuit (complaint) shall be deemed accepted where the court does not return or refuse to accept the respective application within 5 days of its receipt. The preliminary hearing of the court shall be held no later than 40 days after the complaint is received by the court. Within 20 days after receiving a copy of the complaint, the defendant in the case shall submit an answer to the plaintiff and the court stating their defenses to the plaintiff's claim, including filing responses to the documents attached to the complaint, as well as copies of the defense and attached documents. Once again, the flexibility in the Code is maintained as the judge remains the one determining the duration of the pre-trial hearing(s). In deliberating, the judge is taking into account the specifics of the case, as well as the time provided for in Article 167 of the Code, depending on the readiness of the case to proceed to the trial stage.

Thus, the submission of the claims and evidence by the parties to each other and to the court within a pre-determined period, as well as the submission of their reasoned arguments in a more thorough manner, will enable the court to examine the position of the parties more accurately, which will ultimately improve the quality of the court decisions.

In addition, the amendments to the Code have also introduced certain changes to the choice of forum agreements, as part of the changes to the pre-trial stage. The new text of Article 40.3 of the Code allows the parties to determine and change the choice of court that will hear the case by the agreement concluded between them in the following two cases:

- Where the parties agree on a choice of forum in a specific matter under a separate agreement prior to the court proceedings;

- Where the dispute has already arisen (i.e. if a certain case is pending before the court), the parties may change the choice of forum hearing the case by reaching an agreement before the preliminary hearing of the case (the new edition of the Code provides for up to 40 days before the preliminary proceedings).

Court Fees

As part of the reforms, the changes have been made to the schedules of court fees. In particular, the changes are the following:

- Parties are required to pay fees when filing an application for all special proceedings (set at 100 AZN);

- The fee will be required for the submission of applications for interim measures (set at 10% of the fees specified in Articles 8.1 and 8.2 of the Law “on the State Duties”), as well as for appeals against rulings on the application and refusal of granting interim measures (set at 50 AZN);

- It is now required to pay a fee for an additional cassation appeal and an application for reconsideration of judicial decisions that have entered into force based on newly discovered facts to the case (set at 50% of the fees specified in Articles 8.1 and 8.2 of the Law “on the State Duties”);

Similarly, there are certain amendments that have changed the previous rates of court fees:

- The limit for the fee on previously assessed claims was between 20 and 30 AZN, after the change the limit of the fee is set between 30 and 50,000 AZN;

- Where the limit of the fee for filing a previously unassessed claim, application for a court order, application for a case to be considered in a special procedure was from 10 to 40 AZN, after the change it is set at 100 AZN;

- Claims by a natural person in connection with a dwelling house, apartment, land, including a garden plot, as well as an application for an agricultural land used (leased) by an individual previously set at 10 AZN, is now set at 100 AZN;

- The limit of the fee for the re-issuance of a copy of the judicial decision set and limited at 10 AZN is now set at 10 AZN, as well as 0.2 AZN for each page after the 10th page.

These changes, aimed at funding the work of the courts, will serve to increase the judiciary’s independence and improve its efficiency by raising additional funds for performing its functions.

The current version of the Code provides for the imposition of court fines on the parties for raising challenges aimed at delaying the court proceedings. Likewise, according to Article 120 of the Code, the court may charge a certain amount to a party who has made an unsubstantiated claim or disputed the claim, or who has consistently obstructed the proper and prompt consideration and resolution of the case. The changes to the Code stipulate that a party, its representative or attorney may be fined for up to 500 AZN not only

for an unsubstantiated claim, but also for a frivolous motion or petition, or for openly obstructing the proper and prompt consideration and resolution of a court case.

Time Limits for Court Proceedings

In addition to the time limits (deadlines) set in the pre-trial proceedings, the changes to the Code have also set certain time limits for the actual trial proceedings. It must be firstly noted that the changes to the time limits in the Code refer to the maximum term for consideration of the case, but regardless the cases must be considered within a reasonable time without exceeding those deadlines. Hence, the time limits specified are a maximum ceiling, rather than an expected time period.

Based on the circumstances of the case, these deadlines can be extended for a period not exceeding 2 months. The Code also allows for shorter time limits provided for under other laws (i.e. the Laws "On Mortgage" and "On Bankruptcy"). In addition, any adjournment will be allowed through a reasoned decision of the court, even with exceptional cases not provided for by the law. At the same time, proceedings cannot be adjourned more than 3 times.

In relation to the applications to the Supreme Court, a cassation appeal must be considered within 3 months from the date of its receipt and the applications against a court ruling (with the exception of decisions on the choice of court) shall be considered within 1 month.

Hence, it is clear that the changes to the Code set the upper time limits for all proceedings in civil matters, while also allowing for exceptional cases provided for in other laws. This will serve to ensure speedy and effective work of the judiciary.

Reversal of the Enforcement Procedures

The amendments to the Code have introduced a new provision allowing for the reversal of the enforcement procedures, which was not previously envisioned in the Code. In case of the annulment of the enforced court judgment and after the reconsideration of the case, a judgment to reject the claim in whole or in part, or to terminate the proceedings in the case or to leave the claim unconsidered (dismiss it without prejudice), the court that adopted this judgment shall take measures to reverse the effects of its enforcement. In addition, the court shall reimburse the damages to the other party under the annulled judgment, and if it is not possible to return the property, or reimburse the value of that property, it shall annul the judgment.

Dedicating a separate article to this issue in the new version of the Code with the following content will help to establish legal certainty regarding the reversal of the enforcement procedures.

Interim Measures

The new approach in the Code is also reflected in matters relating to interim measures. In dealing with this, the experience and practice of the Code of Administrative Procedure (CAP) had been carefully studied and partially implemented.

Previously, Article 157.2 of the Code stipulated that the interim measures were meant only to ensure the future enforcement of a court judgment. The revised text of the article aims to prevent an imminent risk of irreparable harm to the applicant's rights due to the actions (or inactions) of the defendant or other persons. The request for an interim measure must be grounded in:

- impossibility to achieve the purposes provided for in Article 157.2 of the Code without the application of an interim measure;

- the existence of preliminary evidence that the claim is well-founded.

Furthermore, one of the important innovations introduced by the amendment to Article 159.1 of the Code is that the request for interim measures will now be considered in separate proceedings. The purpose of including this provision in the CAP is to eliminate the dependence of the proceedings on the application of interim measures on the merits of the proceedings. Thus, although these two proceedings are interrelated, they are separate proceedings, taking into account their nature and the issues they resolve. This has also sparked a practical issue. In practice, the right to apply for an interim measure was used to delay the trial and to prevent the conclusion of the proceedings. However, now that the interim measures are considered in separate proceedings, these abuses will be prevented.

Following the new amendments, the scope of the use of other measures not listed in Article 158.1 of the Code, which may be applied by the courts, has been expanded. Courts have the opportunity to apply not only the stipulated measures, but also other options not provided for in the Code. This new opportunity will inevitably serve for a more effective protection of rights.

Moreover, with the newly adopted Articles 159.4 and 159.5 of the Code, the mechanism for returning a request for interim measures was established. Therefore, the court must rule on the return of the request in the following two cases:

- if the document confirming the payment of the court fee is not attached to the application;

- if the application is not signed or is signed by an unauthorized person, or by a person whose official position is not specified.

Nevertheless, the return of an application requesting interim measures does not prevent a party from re-applying to the court with a new request. In addition, the previous version of Article 160.2 of the Code required the issuance of a writ of execution. The new Code has brought two important innovations in this regard. The first is that the court decision to apply interim measures may be sent to the relevant authorities for execution without a writ of execution, or a writ of execution may be issued on the basis of that ruling. This change aims to ensure more expeditious enforcement and allows the court to be more flexible. The second important change is that a certified copy of the ruling or a writ of execution may be provided to the relevant authorities at the request of the applicant (emphasis added). Thus, since the application of interim measures is aimed at protecting their rights, the applicants will be able to take the initiative and be proactive in enforcing them if they wish so.

As a result of the changes, the number of parties having the right to demand lifting of the interim measures has expanded. According to the new wording of Article 162.1 of the Code, in addition to the court's own initiative and the motion of the parties, the court may lift the application of an interim measure at the request of other participants of the case or other persons not involved in the case but whose rights and obligations are being affected by the decision. Hence, the amendments established the possibility for all parties whose interests are likely to be affected to protect their rights.

Amendments to Article 164 of the Code relating to the compensation for damage caused by the application of an interim measure have brought two important changes. One is that a claim for damages may be filed in two cases, while previously this was possible only if the claim on the merits was rejected. According to the current edition, these are:

- after the entry into force of a judgment resolving the case on the merits;

- if the court decides to apply an interim measure before a complaint is filed in a lawsuit, but the lawsuit is not filed within the required 1-month period.

The second major change is that the previous version of the Code only gave the defendant the right to sue for damages. After the current changes came into effect, all interested parties have this right. This means that such a claim will now be available not

only to the defendant, but also to all parties who claim that they have been harmed and their rights have been violated as a result of the application of interim measures. Thus, the mechanisms of the protection of rights have been further improved and made more readily available.

By regulating the rules of the application of interim measures in civil proceedings in more detail, the new changes will provide for greater flexibility in the application of such measures and will yield more substantiated decisions being adopted and will reduce the possibility of abuse in applying these measures.

Requirements for an appeal and grounds for a return of the appeal

The content and form of an appeal have also been reformed. There is now an approved appeal form under Article 363 of the Code, which has to be filled out for a request for an appeal. In addition to the previous requirements of including a person's full name, other information that allows for identification of the identity, along with the registered address and the actual place of residence must be included. The form must also state which part of a court judgment is being disputed and reference must be made to the specific facts (as well as proof of these facts) of the judgment.

The grounds for returning an appeal request have also undergone a change. Unlike its predecessor, the revised Code envisions a legal ground for refusing an appeal to the parties that were not a party to the previous proceedings. Another ground is the non-compliance with the form and content of the appeal. The revised Code has also reduced the time by which an appellant may request to return his/her request. Appeal requests not submitted in electronic form (in courts where the "e-Court" information system has been implemented) are returned automatically.

Request for a cassation appeal

The changes to the Code have also touched upon the admissibility procedures regarding the right to lodge a cassation appeal. For instance, with respect to the court judgments, the value of the disputed parts of property claims appealed to the Supreme Court in civil matters have to be no less than 5,000 AZN, and in commercial matters the value must be no less than 10,000 AZN.

In addition, it was previously possible to file a cassation appeal against all rulings on the return of a cassation appeal, but this will not be possible if the cassation appeal is returned by the appellate court on the basis of the decision of the cassation court on the inadmissibility of the appeal.

Requirements for a cassation appeal and grounds for its return have been changed too. As in the appellate court, now a party must comply with the procedural requirement of filing the cassation appeal in a pre-approved form. Similarly, in addition to the full name of the petitioner, other information that allows for identification of the identity, along with the registered address and the actual place of residence must be included. The form must also state which part of a court judgment is being disputed and reference must be made to the specific facts (as well as proof of these facts) of the judgment. In addition, the petitioner must clearly state whether the party requests full or partial annulment of the court judgment or if this is a request for a new judgment in the case or reconsideration of the case. Evidence of violation or misapplication of substantive and procedural law, as well as violation of the uniformity of judicial practice (case law) must be included in the cassation appeal form.

Concerning the return of the cassation appeal, the following amendments have been made. Firstly, the text of the Code now stipulates the legal grounds for a return, which previously was not the case. Now, Articles 402 and 407.1 of the Code serve as the grounds for a return, which are the non-compliance with the approved form and content of the cassation appeal respectively. Likewise, the cassation appeal is returned in case it has not been submitted via the “e-Court” information system.

These changes to the procedures of the work of the appellate courts and the court of cassation will ultimately lead to an improved quality of preparedness and justice, due to more stringent requirements towards all parties.

Written proceedings

Lastly, it is imperative to note the increasing use in the judiciary of the new development of written proceedings. Although the previous version of the Code did not implement the concept of written proceedings, there were procedures that reflected certain elements of these proceedings. In particular, the experience of recent years has shown that, if for some objective reason (i.e. the pandemic) it is not possible to hold court hearings and for the parties to appear in court, written proceedings is the optimal route to continue the proceedings and resolve the disputes. The current changes are accompanied by more fundamental changes in this direction.

The addition of a new Article 10.8-1 to the Code provides both a definition of written proceedings (consideration of cases without a hearing and summoning of the parties to hearings) and a range of issues to be resolved in this manner (159, 269, 280, 284-5, 394-1,

397.2, 403-1.6, 414.1, 422, 431-3 and 437). However, in accordance with Articles 394-1 (proceedings on small claims), 397.2 (consideration of appeals against rulings by the court of appellate instance) and 414.1 (consideration of cassation appeals), the court shall issue a ruling to this effect if necessary. The opportunity to consider the case in court by informing the parties is also maintained.

The application of written procedure will not only increase the requirements for the quality of procedural documents submitted by the parties to the court, but will also serve to prevent unnecessary delays in court proceedings. The aim of the changes is to eliminate such delays in the judicial process, thereby increasing the efficiency of justice and ensuring the right of citizens to effective legal remedies.