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Meeting: 1419th meeting (December 2021) (DH)

Communication from the applicant (24/11/2021) in the case of Yagublu and Ahadov v. Azerbaijan (Application No. 67374/11) (Muradova group).

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 : 1419^e réunion (décembre 2021) (DH)

Communication du requérant (24/11/2021) relative à l'affaire Yagublu et Ahadov c. Azerbaïdjan (requête n° 67374/11) (groupe Muradova) **[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.

To:

DGI - Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR
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24 NOV. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

E-mail: dgl_execution_just_satisfaction@coe.int
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From:

Tofig Yagublu, first applicant
(*Yagublu and Ahadov v. of Azerbaijan, Appl. No. 67374/11 and 612/12*)

Sent by email

November 24, 2021

**Submissions pursuant to Rule 9(1) of the Committee of Ministers' Rules for the
Supervision of the Execution of Judgments - Yagublu and Ahadov v. of
Azerbaijan, No. 67374/11 and 612/12**

(Muradova, Mammadov (Jalaloglu) and
Mikayil Mammadov groups v. Azerbaijan)

Executive Summary

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1. Introduction

I am the first applicant in the case of **Yagublu and Ahadov v. of Azerbaijan** (appl. No. 67374/11 and 612/12). **Yagublu and Ahadov v. Azerbaijan** is a repetitive case. Implementation of the decision is under the control of Muradova Group, Mammadov (Jalaloglu) Group and Gafgaz Mammadov Group cases. This submission is related to the status of the implementation of the decision and intended to ensure the full and more effective implementation of the decision.

2. Case summary

The case of the first applicant, as one of the leaders of an opposition political party, related to his illegal detention during a protest rally in Baku, torture in the police station, illegal charges with an administrative offense, and denial for the access to a lawyer. Local authorities found the first applicant guilty of disobeying a lawful order of the police and sentenced him to 8 days of administrative detention. The first applicant complained of torture by the police, but the national authorities denied his allegations. The ECtHR ruled in this case that there was a substantive and procedural violation of Article 3 of the Convention. The ECtHR, which did not consider the grounds for imposing administrative penalties on the applicants to be appropriate found a violation of Articles 5 and 11 of the Convention in respect of the first applicant. The court also ruled that, "...Having regard to the facts of the present case and the clear similarity between these facts and those of the Gafgaz Mammadov case and the Huseynli and Others case on the most relevant and crucial points, the Court sees no particular circumstances that could compel it to deviate from its findings in those judgments. Accordingly, the administrative proceedings in the present case, considered as a whole, were not in conformity with the guarantees of a fair hearing. ... There has accordingly been a violation of Article 6 §§ 1 and 3 of the Convention in respect of the first applicant."

The court ruled that the respondent government should pay the first applicant 15,600 (fifteen thousand six hundred euros) compensation as non-pecuniary damages and 1,300 (one thousand three hundred euros) as court expenses.

3. Implementation status of the decision

We bring to the attention of the Committee of Ministers that the Government of Azerbaijan has taken some individual measures to implement this decision.

The government has partially taken the necessary steps to compensate the first applicant for pecuniary and non-pecuniary damages. So far, the government has paid only 8,000 euros to the first applicant. The applicant was paid 2,000 euros on 21 May 2021, 3,000 euros on 14 July 2021 and 3,000 euros on 25 September 2021. The remainder of the amount of compensation determined by the court, as well as the delayed interest rate, remains unpaid to the first applicant.

Apart from the incomplete payment of the said compensation, no other individual measures were taken in relation to the first applicant.

The first applicant states that he has been the target of politically motivated pressure and repression since the events described in the court's decision. He was prosecuted in 2013 for his active participation in political events and sentenced to long prison terms by national courts. The

ECtHR has the judgment on 5 November 2015 in connection with these events.¹ The judgment found a violation of Article 5 of the Convention in respect of the first applicant. The first applicant was detained in 2012 on charges of administrative misconduct and punished for his political activities.² The ECtHR also announced its decision on those events in 2021 and ruled that the first applicant's rights had been violated under Articles 5 and 6 of the Convention. A new criminal case was opened against the first applicant on fabricated charges in early 2020 and he was convicted. His leaving from the country was also banned and is currently in force.

4. Individual measures

According to the domestic law of, the decisions of the ECtHR, which determine the violation of the rights guaranteed by the Convention, are the basis for reconsideration of these cases in the internal courts. This rule is provided for in Article 455 of the Code of Criminal Procedure of the Republic of Azerbaijan (CCP) (*Appendix 1: Code of Criminal Procedure of the Republic of Azerbaijan, Article 455.0.2*).

According to domestic law, when a decision is made by the ECtHR on the payment of compensation or the restoration of violated rights, the Plenipotentiary Representative of the Republic of Azerbaijan to the European Court of Human Rights must inform the relevant state authorities for full and timely enforcement (*Annex 2: Regulations on the Plenipotentiary Representative of the Republic of Azerbaijan to the European Court of Human Rights, Article 10.11*).

According to Article 456 of the CCP, the decision submitted by the Plenipotentiary Representative of the Republic of Azerbaijan to the European Court of Human Rights must be considered and decided by the Supreme Court of the Republic of Azerbaijan within 3 months (*Appendix 3: CCP, Article 456.2; CCP, Article 459*).

CCP establishes the right of the acquitted person to compensation for damages caused to him because of the mistake of the prosecuting authority (*Annex 4: CCP Article 56*). According to the same Code, the damage includes both material, physical and moral damage (*Appendix 5: CCP, Article 57.1*). The CCP also stipulates that the right to demand compensation for damage caused during criminal proceedings is recognized when decision on the acquittal that has entered into force (*Annex 6: CCP, Article 61.1*).

References to the above-mentioned domestic laws, as well as the national practice formed by the Plenum of the Supreme Court of the Republic of Azerbaijan in 2020-21 with the implementation of the decisions of the ECtHR brings enough clarity to aspect of the implementation of individual measures in the case of **Yagublu and Ahadov v. Azerbaijan**.

In the case of *Rasul Jafarov v. Azerbaijan*, the ECtHR recognized the violation of provisions of Articles 5, 11 and 18 of the Convention in relation to the applicant. In the case of *Ilgar Mammadov v. Azerbaijan*, the ECtHR found that that Articles 5, 6 and 18 had been violated in relation to the applicant. The Plenum of the Supreme Court of the Republic of Azerbaijan reconsidered the above-mentioned cases for the implementation of these decisions. Based on the violations identified by the ECtHR decisions, the Plenum of the Supreme Court decided to acquit both applicants and to compensate each of them for material and moral damages. In the case of *Aslan Ismayilov v. Azerbaijan*, the ECtHR found a violation of Article 6 of the Convention in relation to the applicant who had been disqualified from the Azerbaijan Bar Association. The Plenum of the

¹ <http://hudoc.echr.coe.int/eng?i=001-158506> - CASE OF YAGUBLU v. AZERBAIJAN (App no. 31709/13)

² <http://hudoc.echr.coe.int/eng?i=001-211033> - CASE OF YAGUBLU v. AZERBAIJAN (App no. 69686/12)

Supreme Court reconsidered the case as part of the implementation process and overturned all decisions of the local courts in respect of the applicant. It returned the case to the appellate court for reconsideration.

In the case of **Yagublu and Ahadov v. Azerbaijan**, the ECtHR found that Articles 3, 5, 6 and 11 of the Convention in respect of the first applicant was violated. The referenced domestic laws and the decisions of the Plenum of the Supreme Court in the context of the enforcement of ECtHR judgments provide a sufficient basis for the reconsideration of the first applicant's case. For this reason, I consider that in accordance with the above-mentioned domestic laws and court practice, the case of the first applicant should be reconsidered by the Supreme Court of the Republic of Azerbaijan "on new grounds". There is no reason in domestic law to exclude a retrial. Unfortunately, the government has not taken any steps in this direction so far. The Plenipotentiary Representative of the Republic of Azerbaijan to the European Court of Human Rights did not send the decision to the Plenum of the Supreme Court of the Republic of Azerbaijan for consideration "on new grounds" and did not provide any information on the reasons for this.

5. Procedural issues

The First Applicant notes that about two years have passed since the final decision of **Yagublu and Ahadov v. Azerbaijan**. Except for the partial payment of compensation, the implementation of the above-mentioned individual measures established by domestic laws and the payment of the remaining part of the compensation and interest rate determined by the decision of the ECtHR are delayed. However, since the decision to implement these individual measures was final, the time-past was sufficient to implement these measures. Due to the long delay in the implementation of the individual measures the first applicant in the case of **Yagublu and Ahadov v. Azerbaijan** requests that the implementation of the individual measures we have outlined in the decision be included in the agenda of the 1419th meeting of the Committee of Ministers of the Council of Europe.

6. Conclusions and Recommendations:

Apparently, despite the ECtHR decision, the Government is delaying the implementation of the individual measures required by the decision. There is no information on what steps the government will take to implement the decision. The applicant is also unaware of whether the Government has provided any information the reasons for the delay in the implementation. The first applicant considers that the Committee of Ministers should continue to monitor the implementation of this decision until all individual measures have been fully implemented.

Based on the above, we ask the Committee of Ministers to:

- Discussion of the implementation of the decision of **Yagublu and Ahadov v. of Azerbaijan** should be included in the agenda of the 1419th meeting of the Committee of Ministers;
- Request the Government of Azerbaijan to provide the first applicant with detailed information on the delay in payment of compensation and its interest on the implementation of the decision;

- Request the Government of Azerbaijan to provide detailed information on the implementation of the decision, in particular in the context of the submission of the applicants' case to the Supreme Court for reconsideration;
- In the decision to monitor the implementation of the decision, it should be noted that the Government of Azerbaijan must ensure the following:

- Call on the Azerbaijani government to fully implement the decision of **Yagublu and Ahadov** against Azerbaijan;
- The decision of **Yagublu and Ahadov's against Azerbaijan** should be re-examined in the light of Articles 455, 456, 56, 57, 61 of the CCP;
- The first applicant must be compensated for material and moral damage;

Yagublu and Ahadov decision against Azerbaijan,

the first applicant:  **Tofiq Yagublu**

Appendix 1.

Criminal Procedure Code

Article 455. Grounds for consideration of judicial acts in light of new circumstances related to the violation of rights and freedoms

455.0. The grounds for considering judicial acts in light of new circumstances related to the violation of rights and freedoms are as follows:

455.0.2. Establishment by the European Court of Human Rights of a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the courts of the Republic of Azerbaijan during criminal proceedings, simplified pre-trial procedure materials or a private prosecution complaint;

Appendix 2

“Regulation on the Plenipotentiary Representative of the Republic of Azerbaijan to the European Court of Human Rights”

...

10.11. In the event that the Court decides to pay monetary compensation to the plaintiff or to restore the violated rights and freedoms, Plenipotentiary Representative of the Republic of Azerbaijan to the European Court of Human Rights informs the relevant state bodies for full and timely execution of the Court's decision;

Appendix 3

Article 456. Consideration of judicial decisions on new facts of violation of rights and freedoms

456.2. If there are grounds provided for in Articles 455.0.1 and 455.0.2 of this Code, the Plenum of the Supreme Court of the Republic of Azerbaijan shall consider cases only on legal issues related to the implementation of decisions of the Constitutional Court and the European Court of Human Rights. When the decision of the Constitutional Court of the Republic of Azerbaijan or the European Court of Human Rights is received by the Supreme Court of the Republic of Azerbaijan, the Chairman of the Supreme Court instructs one of the judges to prepare and report the case to the plenary session. The case shall be considered at the plenary session no later than 3 months after the decision of the Constitutional Court of the Republic of Azerbaijan or the European Court of Human Rights is received by the Supreme Court of the Republic of Azerbaijan.

Article 459. Decision for review of judicial acts based on new circumstances related to violation of rights and freedoms during the criminal proceedings in the courts of the Republic of Azerbaijan as the result of finding of violation of the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights

459.0. The Plenum of the Supreme Court of the Republic of Azerbaijan, having revised the judicial act in the cases provided for in Article 455.0.2 of this Code, has the right to adopt one of the following decisions: 459.0.1. full or partial annulment of the relevant judicial acts of first, appellate and cassation courts, as well as judicial acts adopted in course of additional cassation proceedings which are adopted in violation of rights and freedoms, and referral for the review to the relevant court of first or appellate instances of criminal cases, materials of simplified pre-trial proceedings, or private prosecution complaints; 459.0.2. In cases provided for in Articles 421.1.2 and 421.1.3 of this Code - change the decision of the court of cassation and (or) the decision adopted in course of additional cassation; 459.0.3. Quash the decision of the court of cassation instance and (or) the decision adopted in course of additional cassation and issue a new decision.

Appendix 4

Article 56. Persons entitled to damages

56.0. The following persons shall have a right to compensation for the prejudice caused by error or abuse by the prosecuting authority:

56.0.1. an accused who is acquitted;

...

Appendix 5

Article 57. Characteristics of compensation

57.1. The persons provided for in Article 56 of this Code shall be paid compensation for non-material, physical and material damage resulting from error or abuse by the prosecuting authority...

Appendix 6

Article 61. Recognition of the right to claim damages

61.1. The right to claim damages for prejudice caused in the course of the criminal proceedings shall be recognized in the final judgment acquitting the accused or in the decision to discontinue the criminal prosecution.

...