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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

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

Communication from the authorities (29/11/2021) concerning the group of cases of Mammadli 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 : 1419^e réunion (décembre 2021) (DH)

Communication des autorités (29/11/2021) 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.

DGI

29 NOV. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Information on expungement of conviction

In their communication, the authorities provided information on expungement of conviction of four applicants in Mammadli group. This matter was afterwards commented by both the Secretariat and the applicants, and this piece of information was even misinterpreted as an intention of the responded state to deviate from the findings of the Court under the infringement procedure and the subsequent decisions of the Committee. Therefore, the Azerbaijani delegation felt that there was need to further clarify the matter in question, which it did during the 1411th DH meeting.

Information on expungement of conviction is provided by the authorities on the account that they are responsible to inform the Committee about any development in respect of each applicant's individual situation. By doing so, Azerbaijani authorities have merely communicated the necessary explanation on the legal consequences of expungement of conviction without questioning the Committee's stance as to the scope of individual measures in Mammadli group.

It should be noted that references to the Article 67 of the Criminal Code in this context is inaccurate. According to Article 67, when imposing a sanction on the cumulative sentences, the court shall combine in whole or in part the unserved part of the sentence imposed under the previous decision with the sentence imposed under the new decision. Thus, this article does not apply in the situations of release or the expungement of the convictions, as it only applies to the unserved part of the ongoing sentence, which is in force.

Moreover, in compliance with Article 83 of the Criminal Code, a person convicted of a crime shall be deemed convicted from the day of entry into force of the court verdict until the day the conviction is removed or expunged. In other words, a person is

considered not convicted from day of expungement of conviction. As prescribed in this article, removal or expungement of the conviction annuls all legal consequences related to the conviction.

The Constitutional Court of Azerbaijan adopted two decisions on interpretation of Article 83 of the Criminal Code, respectively in May 2009 and September 2010. In its first decision, Plenum of the Constitutional Court stated that, I quote: “The existing legislation provides two procedures of the termination of a previous conviction: expungement or removal of previous conviction. Expungement of previous conviction means the end of all legal consequences connected with the fact of punishment for a crime committed by a person in the result of the expiry of the term provided by the law. For recognition of the person as non-convicted no any other document confirming the present fact or the special judicial decision is required.” End quote. In its second decision the Plenum of the Constitutional Court provides that, while assessing the misconduct of a person from the criminal law point of view, recidivism should be interpreted exclusively in the light of a notion of “a convicted person” as described in Article 83. Any other approach could lead to violation of the principle of the presumption of innocence enshrined in Article 63 of the Constitution of the Republic of Azerbaijan, unjustified assessment of the act as recidivism, imposition of a heavier sentence, worsening of a person's condition without legal grounds.

Consequently, those applicants in Mammadli group of cases, whose convictions were expunged, are considered not convicted. Thus, expungement of conviction may suggest elimination of the urgency of constant review of their cases. However, expungement of the applicants' conviction through passage of time does not preclude the examination of their cases at the Supreme Court.

Meantime, only three applicants in the Mammadli group who have their convictions

standing. When it comes to the negatives consequences and limitations of criminal convictions, those who have expunged their convictions do not currently face practical negative consequences. As for the remaining three, the possible negative consequences for them could be listed as not being able to run for elected posts, to be enrolled in public service, or to practice certain professions. While absolutely not arguing against the necessity of eliminating of all negative consequences of criminal convictions against the applicants, when assessing the individual situation of applicants from the point of actual practical implications of their criminal convictions, in fact one can see relatively limited impacts.