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Meeting: 1514th meeting (December 2024) (DH)

Communication from the applicant (28/11/2024) concerning the case of Makuchyan and Minasyan v. Azerbaijan (Application No. 17247/13).

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 : 1514e réunion (décembre 2024) (DH)

Communication du requérant (28/11/2024) relative à l'affaire Makuchyan et Minasyan c. Azerbaïdjan (requête n° 17247/13) ***[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.

27 November 2024

Communication from the applicants pursuant to Rule 9.1 of the Rules of the Committee of Ministers in the case of Makuchyan and Minasyan v. Azerbaijan and Hungary (Application No. 17247/13)

1. This communication is submitted by the applicants in accordance with Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgment in the case of *Makuchyan and Minasyan v. Azerbaijan and Hungary*. Herewith, the applicants inform the Committee of Ministers that the Respondent Government fails to abide by the Court's judgment and perform the required execution measures. The applicants respectfully request the Committee and Council of Europe member States to exert all possible efforts to oblige the Azerbaijani authorities to immediately and effectively execute the judgment and to discontinue any kind of racial discrimination against Armenians.

I) Case description and the Court's judgment

2. The case concerns Azerbaijan's purposeful non-enforcement of a prison sentence imposed in Hungary on Azerbaijani military officer Ramil Safarov ("R.S.") for an ethnic hate crime committed against two Armenian victims (beheading of one Armenian officer and attempted murder of the other during a NATO-organized English language course in Budapest) in 2004. Ramil Safarov was sentenced to life imprisonment, with a possibility of conditional release after 30 years. Upon his transfer to Azerbaijan in 2012, he was glorified as a hero, pardoned, promoted and awarded other benefits (offered an apartment and awarded salary arrears for the 8-year period spent in prison). By approving the acts of Safarov, Azerbaijan utilized the latter as a tool for the promotion of anti-Armenian propaganda and furtherance of its policy of Armenophobia.
3. The Court held that the acts of Azerbaijan in effect granted his citizen impunity for the crimes committed against Armenian victims, which is not compatible with Azerbaijan's obligation under Article 2 to effectively deter the commission of offences against the lives of individuals (Article 2 under its procedural limb[1]). In addition, the Court held that Azerbaijan violated Article 14 of the Convention in conjunction with Article 2 since Azerbaijan's breach

[1] *Makuchyan and Minasyan v. Azerbaijan and Hungary*, App. No. 17247/13, para. 173

of its procedural obligations under Article 2 was ethnically motivated[2]. The Court found particularly disturbing the statements made by a number of Azerbaijani officials glorifying Ramil Safarov, his deeds and his pardon, which expressed particular support for the fact that Safarov's crimes had been directed against Armenian soldiers, congratulated him on his actions and called him a patriot, a role model and a hero. The Court noted that a special page on the website of the President of Azerbaijan had been created, labelled "Letters of Appreciation", where individuals could express their congratulations on Safarov's release and pardon because his attack had been of an ethnic nature, the pardon could be perceived as an important step in the process of legitimizing and glorifying his actions. The Court concluded that various measures leading to Safarov's virtual impunity, coupled with the glorification of his extremely cruel hate crime, had a causal link to the Armenian ethnicity of his victims.

4. The Court stressed that Azerbaijan has a legal obligation to adopt general and/or individual measures in its domestic legal order to put an end to the violations found by the Court, and to redress the effects of the violation as far as possible.
5. As to the Costs and Expenses, the applicants did not claim pecuniary and non-pecuniary damages, but legal costs and expenses only. The Court granted GBP 15,143.33 (fifteen thousand one hundred and forty-three pounds sterling and thirty-three pence), plus any tax that may be chargeable, to be paid within three months from the date on which the judgment became final.

II) Non-compliance with the Court's judgment

6. Despite the judgment becoming final on 12 October 2020, Azerbaijan only submitted its Action Plan on 5 April 2023 (the "Action Plan"). This plan noted that the Court left the execution of individual measures up to the discretion of Azerbaijan.[3] However, Azerbaijan refused to adopt measures despite the Court's Judgment and recommendations.
7. Azerbaijan claims that no further action can be taken in regards to the revocation of the pardoning of R.S. However, the 17 April 2023 Rule 9.2 Communication to the Committee of Ministers from various NGOs noted that if an immediate revocation of R.S.'s pardon is impossible, there are international judgments showcasing that it can be done through the courts (as noted, in the case of North Macedonia, the United States and judgment of the

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[2] Ibid, para. 221

[3] 1468th meeting (June 2023) (DH) - Action Plan (05/04/2023) - Communication from Azerbaijan concerning the case of Makuchyan and Minasyan v. Azerbaijan (Application No. 17247/13), Article 10, https://hudoc.exec.coe.int/eng#{%22execidentifier%22:[%22DH-DD(2023)431E%22]}

Inter-American Court of Human Rights), thus enabling Azerbaijan to fulfil its obligations under the articles of the Convention.

8. Azerbaijan has disregarded the cited judgments of the Inter-American Court of Human Rights ("Inter-American Court"), claiming they exist in different circumstances. However, the cases are sufficiently analogous to the present case to warrant preservation of the same human rights standards. For instance, in 2018, the Inter-American Court reviewed the pardon of Peru's former President Alberto Fujimori. In that case, the Inter-American Court concluded that, because of its connection to serious human rights abuses the pardon needed to be subject to judicial review to ensure the protection of the rights of the victims. The court ordered domestic review of the pardon within 90 days of its judgment. The Peruvian Supreme Court, unlike its Azerbaijani counterpart, reviewed the decision and revoked the former President's pardon, emphasizing that, since his crimes were "*the most serious crimes of importance to the whole international community,*" then, "*the concession of a benefit that suspends or pardons the imposed sanction (even more if it is the most serious penalty imposed under the Peruvian legal system), its grant can and should be subject to review, by whoever is in charge with compliance.*"
9. Both the Inter-American Court and the Peruvian government had the right idea, allowing an illegitimate pardon to curtail the rights of victims of human rights abuses will send a message that is dangerous for the international order. Azerbaijan's failure to do the same has had this exact effect, evidenced by actions taken by the Azerbaijani army during the 2020 Nagorno-Karabakh war. R.S.'s glorification manifestly triggered a pattern of symbolic beheadings by Azerbaijani military personnel of ethnic Armenians, which was not only limited to Armenian military personnel, but elderly civilians as well. This method of execution has even spread to other regional conflicts, including Ukraine.
10. Furthermore, the European Commission Against Racism and Intolerance ("ECRI") also understood and warned against actions such as the illegitimate pardoning of an ethnic hate crime. In a statement adopted after its 85th Plenary Meeting spanning from 30-31 March 2021, the ECRI called upon all stakeholders, in particular those at the highest political level "*to prevent criminal offences motivated by hate or prejudice on the grounds of national, ethnic, linguistic or religious background or of citizenship, whether real or presumed, and refrain from any expression or action, in any form, which would qualify as the advocacy, promotion of or incitement to the denigration, hatred or vilification of a person or groups of persons on these grounds, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or groups of persons and any justification of all the preceding types of expression*" and "*to challenge and condemn in the strongest*

terms any such manifestations of hatred and ensure that anyone instigating, inflicting or condoning such speech and violence is held accountable." The ECRI's statement specifically noted the case of *Makuchyan and Minasyan v. Azerbaijan and Hungary* and stated that "*Under the case law of the European Court of Human Rights, States have an obligation to take all reasonable steps to.... sanction the perpetrators of hate-motivated crimes.*" However, rather than be condemned, challenged or sanctioned, R.S. has been pardoned and praised by Azerbaijan.

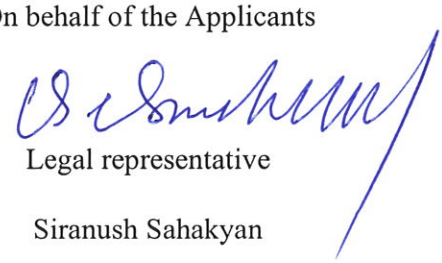
11. Azerbaijan claims that R.S.'s pardon did not expunge him of his crime, and that he was never treated as innocent. This is contrary to the *de facto* treatment of R.S., in regards to his immediate pardoning following his repatriation after serving only 8 ½ years of a minimum of a 30-year sentence, his promotion, rewarding of back pay and an apartment, and his continued treatment as a hero in Azerbaijan; such treatment is indicative that R.S. has been expunged of his crime as he has been treated though he had never been sentenced to an ethnically motivated hate crime.
12. Individual measures against R.S., including the immediate revocation of his pardon or pursuit of such through the courts, would be both a measure to fulfil Azerbaijan's obligations under the Convention and a symbolic measure to address the discrimination against ethnic Armenians, which R.S.'s case is a microcosm of. However, after the judgment becoming final on 12 October 2020, no such actions have been undertaken by Azerbaijan for more than 4 years as of this date.
13. Finally, Azerbaijan has continued to fail to pay the amount determined by the Court for legal costs and expenses. The representatives of the applicants have sent the bank account details to the Deputy Grand Chamber Registrar on 8 January 2021, and via email to the Department for the Execution of Judgments of the Court at the DGI and the Agent of the Government of the Republic of Azerbaijan on 15 January 2021. Despite having over three years to address this issue, Azerbaijan has failed to do so. The Action Plan devotes a single sentence to this issue, noting that they will, "*undertake all necessary arrangements required to provide prompt payment.*" "*Prompt payment*" has been stalled for over three years now.
14. Moreover, Azerbaijan has failed to comply with a number of other judgments concerning the victims of Armenian ethnicity (*Petrosyan v. Azerbaijan* (Application no. 32427/16), *Khojoyan and Vardazaryan v. Azerbaijan* (Application no. 62161/14), *Badalyan v. Azerbaijan* (Application no. 51295/11), *Saribekyan and Balyan v. Azerbaijan* (Application no. 35746/11)), which reveals a state policy of intentional non-execution of the Court's judgments favoring innocent victims of Armenian ethnicity.

15. Under these circumstances, Azerbaijan is not merely delaying in its compliance, but barely failing to execute the Court's judgment. Thus, it falls to the Committee of Ministers, acting under Article 46 of the Convention, to specify measures, required of the respondent Government by way of compliance, through both individual and general measures. Hence, it is now appropriate for the Committee of Ministers to specify feasible, timely, adequate and sufficient measures that will bring Azerbaijan into compliance with the judgment.

III) Recommendations

6. Hereby, the applicants urge the Committee of Ministers:
    a. Call on the Azerbaijani Government to immediately pay the amount of just satisfaction awarded by the Court
    b. Recommend that Azerbaijan:
        i. Revoke the presidential order pardoning Ramil Safarov, as this constitutes the most appropriate measure of reparation for the violations of Articles 2 and 14 of the Convention, and is essential for achieving restitutio in integrum
        ii. Enforce unconditionally the life imprisonment sentence imposed by the Hungarian courts Withdraw all benefits and privileges conferred upon Safarov following his pardon
    c. Ensure the full implementation of the judgment by utilizing all available mechanisms at the disposal of the Committee, including those under Article 46.4

On behalf of the Applicants



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