

Résolution intérimaire CM/ResDH(2017)429 Exécution de l'arrêt de la Cour européenne des droits de l'homme Ilgar Mammadov contre Azerbaïdjan

(adoptée par le Comité de Ministres le 5 décembre 2017,
lors de la 1302^e réunion des Délégués des Ministres)

Requête	Affaire	Arrêt du	Définitif le
15172/13	ILGAR MAMMADOV	22/05/2014	13/10/2014

Le Comité des Ministres, en vertu de l'article 46, paragraphe 2, de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, qui prévoit que le Comité surveille l'exécution des arrêts définitifs de la Cour européenne des droits de l'homme (ci-après nommées « la Convention » et « la Cour »),

Rappelant sa Résolution intérimaire CM/ResDH(2017)379 signifiant, aux fins de mise en demeure, à la République d'Azerbaïdjan son intention de saisir la Cour, lors de sa 1302^e réunion (DH) du 5 décembre 2017, conformément à l'article 46 § 4 de la Convention, de la question de savoir si la République d'Azerbaïdjan avait manqué à son obligation, au regard de l'article 46 § 1, de se conformer à l'arrêt de la Cour du 22 mai 2014 dans l'affaire *Ilgar Mammadov*, et invitant la République d'Azerbaïdjan à transmettre de manière concise son opinion sur cette question avant le 29 novembre 2017 au plus tard ;

Rappelant à nouveau

- a) que dans son arrêt précité, la Cour a non seulement constaté une violation de l'article 5 § 1 de la Convention, considérant qu'aucun fait ou aucune information n'avaient été produits donnant lieu à des soupçons justifiant les accusations portées contre le requérant ou son arrestation et sa détention provisoire, mais aussi à une violation de l'article 18 combiné avec l'article 5, considérant que le but véritable de ces mesures avait été de le réduire au silence ou de le punir pour avoir critiqué le gouvernement ;
- b) l'obligation de l'État défendeur, en vertu de l'article 46 § 1 de la Convention, de se conformer à tous les arrêts définitifs dans les litiges auxquels il est partie et que cette obligation implique, outre le paiement de la satisfaction équitable octroyée par la Cour, l'adoption par les autorités de l'État défendeur, si nécessaire, de mesures individuelles pour mettre fin aux violations constatées et en effacer les conséquences, dans la mesure du possible par *restitutio in integrum* ;
- c) l'appel du Comité, lors de son premier examen de l'affaire le 4 décembre 2014, sous l'angle des mesures individuelles requises à la lumière de l'arrêt précité, à assurer la libération du requérant sans retard ;
- d) les nombreuses décisions et résolutions intérieures ultérieures du Comité soulignant les défaillances fondamentales dans la procédure pénale, révélées par les conclusions de la Cour sous l'article 18 de la Convention combiné avec l'article 5, et demandant la libération immédiate et inconditionnelle du requérant ;
- e) que la procédure pénale diligentée contre le requérant s'est achevée le 18 novembre 2016 devant la Cour Suprême sans que les conséquences des violations constatées par la Cour européenne aient été tirées, en particulier celle de l'article 18 combiné avec l'article 5 ;
- f) que plus de trois années se sont écoulées depuis que l'arrêt de la Cour est devenu définitif et que le requérant reste emprisonné sur la base de la procédure vicieuse ;

Considère que, dans ces circonstances, en n'ayant pas assuré la libération inconditionnelle du requérant, la République d'Azerbaïdjan refuse de se conformer à l'arrêt définitif de la Cour ;

Décide de saisir la Cour, conformément à l'article 46 § 4 de la Convention, de la question de savoir si la République d'Azerbaïdjan ne s'est pas conformée à son obligation en vertu de l'article 46 § 1 ;

L'opinion concise de la République d'Azerbaïdjan sur la question soulevée devant la Cour est jointe en annexe (en anglais uniquement).

Annexe : Vues de la République d'Azerbaïdjan

“INTRODUCTION

1. At their 1298th meeting of 25 October 2017, the Ministers' Deputies adopted Interim Resolution CM/ResDH(2017)379, in which the Committee served formal notice on the Republic of Azerbaijan of its intention, at its 1302nd meeting (DH) on 5 December 2017, to refer to the Court, in accordance with Article 46 § 4 of the Convention, the question whether the Republic of Azerbaijan has failed to fulfil its obligation under Article 46 § 1 of the Convention arising following the Court's judgment in *Mammadov v. Azerbaijan* (no.15172/13, 22 May 2014).

2. In response to the Committee's invitation extended in the Deputies' above Interim Resolution, the Government of the Republic of Azerbaijan submit their views concerning the question of execution of the Court's judgment in the above case.

THE FACTS

3. On 4 February 2013 the applicant was charged with criminal offences under Articles 233 (organising or actively participating in actions causing a breach of public order) and 315.2 (resistance to or violence against public officials, posing a threat to their life or health) of the Criminal Code, and arrested by the decision of the Nasimi District Court. On 30 April 2013 the applicant was charged under Articles 220.1 (mass disorder) and 315.2 of the Criminal Code.

4. On 17 March 2014 the Sheki Court for Serious Crimes convicted the applicant under Articles 220.1 and 315.2 of the Criminal Code and sentenced him to seven years' imprisonment.

5. On 24 September 2014 the Sheki Court of Appeal upheld the judgment of the court of first instance. Article 407.2 of the Criminal Code of the Republic of Azerbaijan provides that the judgment shall be final immediately after delivery of the decision of the Court of Appeal. Accordingly, as from 24 September 2014, the applicant was not under the pre-trial detention; he was serving his sentence.

6. On 22 May 2014 the Court (First Section) adopted judgment, in which it found violation of Article 5 §§ 1 (c) and 4, Article 6 § 2 of the Convention, and Article 18 of the Convention taken in conjunction with Article 5 of the Convention. This judgment was final on 13 October 2014.

THE COMMITTEE OF MINISTERS' PROCEDURES FOR SUPERVISION OF EXECUTION OF THE COURT'S JUDGMENTS

7. Rule 6 of the CM Rules reads as follows:

“1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.

2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:

a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and

b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:

i. individual measures have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;

ii. general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.”

INDIVIDUAL MEASURES ADOPTED

8. On 25 December 2014 a total amount of 22,000 euros was paid to the applicant in respect of non-pecuniary damage and costs and expenses.

9. By its decision of 13 October 2015, the Supreme Court quashed the Sheki Court of Appeal's judgment of 24 September 2014, finding that the lower court's rejection of the applicant's requests for examination of additional witnesses and other evidence had been in breach of the domestic procedural rules and the requirements of Article 6 of the Convention. The case was remitted to the Sheki Court of Appeal for a new examination in compliance with the domestic procedural rules and the Convention requirements.

10. On 29 April 2016 the Sheki Court of Appeal finalized examination of the applicant's case and upheld the judgment of the Sheki Court for Serious Crimes of 17 March 2014. It, particularly carefully addressed the Court's conclusions drawn in the present judgment and remedied the deficiencies found in the proceedings leading to the applicant's conviction.

GENERAL MEASURES

11. In December 2015, under Article 52 of the Convention, the Secretary General of the Council of Europe launched an inquiry to find out how the domestic law in any member state makes sure that the convention is properly implemented.

12. On 11 January 2017 the mission set up by the Secretary General visited Azerbaijan and held discussions, with judicial, legislative and executive authorities, to cover all issues related to execution of the Court's judgment in the applicant's case. Authorities have confirmed their readiness to examine all avenues suggested by the mission to further execute the Court's judgment.

13. On 10 February 2017, President of the Republic of Azerbaijan signed Executive Order "On improvement of operation of penitentiary, humanization of penal policies and extension of application of alternative sanctions and non-custodial procedural measures of restraint".

14. Executive Order covered a number of questions raised by the Court in its judgment, including existence of reasonable suspicion of having committed an offence at the time of arrest and consideration of alternative measures of restraint by relevant authorities.

15. Further humanisation of penal policies in Azerbaijan was listed among the aims of the document. It said that, in application of measures of restraint by investigation authorities and courts, provisions of criminal procedure law concerning grounds for arrest should be strictly complied with, and the level of application of alternative sanctions and measures of procedural compulsion extended to attain aims of punishment and of measure of restraint through non-custodial means.

16. The President of the Republic of Azerbaijan recommended to the Supreme Court, the General Prosecutor's Office and instructed the Ministry of Justice with elaboration of the draft laws concerning decriminalisation of certain crimes; provision of the sentences alternative to imprisonment; development of grounds for non-custodial measures of restraint and sentences alternative to imprisonment; wider application of institutions of substitution of remainder of imprisonment by lighter punishment, parole and suspended sentence; extension of cases of application of measures of restraint alternative to arrest; simplification of rules for amendment of arrest by alternative measures of restraint; and further limitation of grounds for arrest for low-risk or less serious crimes.

17. The President also recommended to the Office of the Prosecutor General to start with examination of alternative measures of restraint when considering motions for arrest.

18. It was also recommended to the courts that they examine the existence of reasonable suspicions of individual's having committed an offence and grounds for arrest, when deciding on measure of restraint, and arguments in favour of alternative measures.

19. According to Executive Order, the Supreme Court shall hold continued analysis of case law of the courts concerning application of arrest and imposition of imprisonment.

20. On 20 October 2017 the Milli Medjlis of the Republic of Azerbaijan adopted the Law on Amendments to the Criminal Code, amending more than three hundred provisions of the criminal legislation. Along with decriminalization of certain acts, the law provides for introduction of sanctions alternative to imprisonment and more simplified rules concerning early release. It shall enter into force on 1 December 2017. The law provides for inclusion of Article 76.3.1-1 opening possibility of conditional release after serving of two-thirds of the term of imprisonment imposed for commitment of serious crimes. Further to this amendment, the applicant would be eligible for conditional release as from 4 August 2017.

21. On 1 December 2017 the Parliament shall also examine, in the third reading, amendments to the Code of Criminal Procedure and the Penal Code, which are in line with the recommendations addressed in the Presidential Decree.

22. In the meantime, following the recommendations given to the investigation and judicial authorities, the number of detainees held in the pretrial detention facilities continues to decrease: the number of detainees held in pretrial detention facilities decreased by 25% in nine months. In addition, the number of judicial decisions concerning the arrest of individuals decreased by 24% in comparison to 2016.

23. In sum, having regard to absence of the Court's any ruling to secure the applicant's immediate release and the discretion of the High Contracting Party to choose the means necessary to comply with the Court's judgment, the Government consider that they implement necessary measures to comply with the Court's judgment in the present case."