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EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF RAMAZANOVA AND OTHERS v. AZERBAIJAN

(Application no. 44363/02)

JUDGMENT

STRASBOURG

1 February 2007

FINAL

01/05/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ramazanova and Others v. Azerbaijan,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President,*
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*

and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 11 January 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 44363/02) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by 4 Azerbaijani nationals, Ms Nabat Ramazanova, Mr Emin Zeynalov, Ms Zarifa Ganbarova and Mr Eldar Alizadeh ("the applicants"), on 22 November 2002.

2. The applicants were represented by Mr I. Aliyev, a lawyer practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr C. Asgarov.

3. The applicants alleged that the significant delays in the state registration of their public association amounted to a violation of their right to freedom of association, that the domestic courts were not independent and impartial, and that the domestic remedies were not effective in lawsuits filed by public associations against the Ministry of Justice of Azerbaijan.

4. On 4 September 2003 the Court decided to give notice of the application to the Government. On 2 March 2006, under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1947, 1949, 1952 and 1947 respectively and live in Baku.

6. On 4 April 2001 the applicants founded a public association named "Assistance to the Human Rights Protection of the Homeless and Vulnerable Residents of Baku" (*"Evsiz və Məzlum Bakılıların İnsan Hüquqlarının Müdafiəsinə Yardım" İctimai Birliyi*). This was a non-profit organisation aimed at providing aid to the homeless and protection of their interests.

A. The applicants' requests for state registration and the original sets of judicial proceedings

7. On 9 April 2001 the applicants filed a request for the association's state registration with the Ministry of Justice (hereinafter also referred to as the "Ministry"), the government authority responsible for the state registration of legal entities. According to the Government, this request was filed on 12 April 2001. Under the domestic law, a non-governmental organisation acquired the status of a legal entity only upon its state registration by the Ministry.

8. On 18 May 2001 the Ministry returned the registration documents to the applicants "without taking any action", i.e. without issuing a state registration certificate or an official refusal to register the association. In the cover letter, the Ministry noted that the association's charter did not comply with Article 6 of the Law *On Non-Governmental Organisations*, because it did not include a provision on the territorial area of the association's activity.

9. The applicants redrafted the charter in line with the Ministry's comments and on 4 June 2001 filed the second registration request, submitting a new version of the charter. On 10 September 2001 the Ministry responded with another refusal, stating that the charter was once again not in compliance with the requirements of the Law *On Non-Governmental Organisations*. Specifically, it failed to provide for the terms of office of the association's supervisory board, as required by Article 25.1 of that Law.

10. The applicants again revised the charter and on 2 October 2001 submitted their third registration request.

11. Having not received any response to their third registration request for several months, on 22 May 2002 the applicants applied to the Yasamal District Court, complaining that the Ministry "evaded" registering their organisation and asking the court to oblige the Ministry to register it. They

also demanded moral compensation in the amount of 25,000,000 Azerbaijani manats (AZM).

12. On 5 July 2002 the Ministry sent a letter to the court, informing that the documents were again returned "with no action taken" by the Ministry. This time the reason for declining the registration was the applicants' failure to include in the charter the conditions for membership in the association, as required by Article 10.3 of the Law *On Non-Governmental Organisations*.

13. On 15 July 2002 the Yasamal District Court dismissed the applicants' claim, finding nothing unlawful in the actions of the Ministry. The court found that the association's charter had not been drafted in accordance with the requirements of the domestic law.

14. The applicants appealed. On 19 September 2002 the Court of Appeal upheld the district court's judgment. On 20 November 2002 the Supreme Court upheld the Court of Appeal's decision.

15. In the meantime, the applicants once again re-drafted the organisation's charter according to the Ministry's latest comments and on 29 July 2002 submitted their fourth registration request. Having not received a reply within the statutory five-day period, they filed a new lawsuit with the Yasamal District Court, claiming that the Ministry committed repeated procedural violations and unlawfully delayed the examination of their registration request.

16. The representatives of the Ministry argued in the court that the examination of the applicants' registration request was delayed due to the heavy workload of the Ministry's Department of State Registration of Legal Entities.

17. On 5 September 2002 the Yasamal District Court issued a procedural decision (*qərardad*) on "leaving the claim without examination", i.e. declaring the applicant's lawsuit inadmissible. The court noted that the applicants' registration request was still pending examination with the Ministry of Justice and that the applicant had filed the lawsuit without exhausting extrajudicial resolution of the matter. On 1 November 2002 the Court of Appeal and on 13 January 2003 the Supreme Court upheld this decision.

18. While the second lawsuit was still examined on appeal, the applicants, having not received any answer from the Ministry by December 2002, filed another lawsuit, asking the court to provide legal interpretation as to whether the Ministry had a right under the domestic law to delay and decline registration multiple times, and to forward the matter of constitutionality of the Ministry's actions for the consideration of the Constitutional Court. On 18 December 2002 the Yasamal District Court refused to admit the lawsuit, noting that the applicants' previous lawsuit was still under consideration on appeal. It also noted that, under the domestic law applicable at that time, a petition to forward the case to the

Constitutional Court should be filed with the Supreme Court. By a final decision of 26 September 2003, the Supreme Court upheld this decision.

19. In January 2003, about six months after the filing of the applicants' fourth registration request in July 2002, the Ministry again refused registration. It appears that, on a later unspecified date, having again re-drafted the charter, the applicants re-submitted their registration request for the fifth time.

20. At the same time, the applicants filed a new lawsuit against the Ministry's latest refusal. On 26 February 2003 the Yasamal District Court refused to admit this lawsuit, because the applicants' appeals in earlier lawsuits were still pending before the higher courts. By a final decision of 3 September 2003, the Supreme Court upheld this decision.

21. Finally, the applicants filed an additional-cassation appeal with the President of the Supreme Court, requesting the reopening of the proceedings and referral of the case to the Plenum of the Supreme Court. By a letter of 10 November 2003, the Supreme Court's President rejected the applicants' request, finding no grounds for the reopening of the proceedings.

B. Decision of the Constitutional Court

22. The applicants filed a constitutional complaint against the domestic courts' judgments, claiming that a number of their constitutional rights had been violated. On 23 February 2004 the Constitutional Court admitted their complaint for examination on the merits.

23. By a decision of 11 May 2004, the Constitutional Court found that all the judgments and decisions of the Yasamal District Court, the Court of Appeal and the Supreme Court were in breach of the judicial guarantees for protection of human rights and freedoms, as guaranteed by the Constitution. Specifically, the Constitutional Court noted that, in the first set of judicial proceedings, the domestic courts failed to examine the applicants' complaint thoroughly and assess the evidence objectively. In particular, in the first set of civil proceedings, the courts failed to thoroughly examine the issue of an alleged violation of the applicants' right to freedom of association and to determine the factual circumstances of the case relating to this issue. The Constitutional Court found that, thus, the domestic courts violated Articles 60 and 70 (I) of the Constitution, providing for judicial guarantees of individual rights and freedoms, as well as a number of provisions of the Code of Civil Procedure. It further found that, in the subsequent judicial proceedings, the domestic courts likewise violated the same provisions of the Constitution.

24. The Constitutional Court quashed all the domestic judgments and decisions relating to the applicants' case and remitted the case to the courts of general jurisdiction for a new examination. It specifically instructed them

to examine the alleged violation of the applicants' right to freedom of association guaranteed by Article 58 of the Constitution.

C. State registration of the association and subsequent judicial proceedings

25. On 18 February 2005 the Ministry of Justice, in response to the applicants' fifth registration request, registered the association and issued a state registration certificate.

26. On the same day, the Yasamal District Court re-examined the applicants' complaint concerning the unlawful actions of the Ministry and their claim of compensation in the amount of AZM 25,000,000 for the alleged violation of their freedom of association. The court dismissed the applicants' claims, noting that, by the time of the new examination of the case, the applicants' association had already been registered and, therefore, the disputed matter had been solved. The court further held that the domestic law did not provide for compensation for moral damages in such situations.

27. On 22 July 2005 the Court of Appeal upheld the first-instance courts' judgment. On 22 December 2005 the Supreme Court upheld the lower courts' judgments.

28. It appears that, thereafter, the applicants filed a new lawsuit, seeking acknowledgement of a breach of domestic law by the Ministry of Justice. On 14 September 2006 the Yasamal District Court rejected this claim. Following an appeal, on 8 December 2006 the Court of Appeal found that the repeated delays by the relevant official of the Ministry of Justice in responding to the applicants' registration requests had constituted a breach of requirements of Article 9 of the Law *On State Registration of Legal Entities*. The court awarded three of the four applicants in the present case, Ms Ramazanova, Mr Alizadeh and Ms Ganbarova, collectively, the sum of 800 New Azerbaijani manats (AZN)[1], which approximately equals to 705 euros (EUR), as a compensation for moral damages. This amount was to be paid by the relevant official of the Ministry of Justice responsible for the delays in the association's state registration.

1. Pursuant to denomination of national currency effective from 1 January 2006, AZN 1 is equal to AZM 5,000.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Republic of Azerbaijan of 12 November 1995

Article 58. Right to association

"I. Everyone has a right to freedom of association with others.

II. Everyone has the right to form any association, including political parties, trade unions or other public associations, or join existing associations. Free functioning of all associations shall be guaranteed. ..."

Article 60. Judicial guarantees of human rights and freedoms

"I. Judicial protection of every person's rights and freedoms shall be guaranteed.

II. Every person shall have a right to complain in the court about decisions and actions (or omission to act) of state authorities, political parties, trade unions and other public associations, as well as public officials."

Article 71. Guarantees for human and civic rights and freedoms

"I. The executive, legislative and judicial powers shall have the duty to guarantee and protect human rights and freedoms fixed in the Constitution. ..."

B. Civil Code of the Republic of Azerbaijan of 2000

Article 47. Charter of a legal entity

"47.1. The charter of a legal entity approved by its founders is the legal entity's foundation document. ...

47.2. The charter of a legal entity shall define the name, address, procedure for management of activities and procedure for liquidation of the legal entity. The charter of a non-commercial legal entity shall define the object and purpose of its activities. ..."

Article 48. State registration of legal entities

"48.1. A legal entity shall be subject to state registration by the relevant executive authority. ...

48.2. A violation of the procedure of a legal entity's establishment or non-compliance of its charter with Article 47 of the present Code shall be the grounds for refusal to register the legal entity. ..."

C. Law "On State Registration of Legal Entities" of 6 February 1996

Article 9. Review of the application [for state registration]

"Upon receipt of an application for state registration from a legal entity or a branch or representative office of a foreign legal entity, the authority responsible for state registration shall:

- accept the documents for review;

- within ten days, issue to the applicant a state registration certificate or a written notification of the refusal to register; or

- review the documents resubmitted after rectification of the breaches previously existing therein and, within five days, take a decision on state registration."

D. Law "On Non-Governmental Organisations (Public Associations and Funds)" of 13 June 2000

Article 6. [Territorial] area of activities of non-governmental organisations

"6.1. Non-governmental organisations may be established and carry out their activities with the all-Azerbaijani, regional, and local status. The area of activities of a non-governmental organisation shall be determined independently by the organisation.

6.2. Activities of all-Azerbaijani non-governmental organisations shall apply to the whole territory of the Azerbaijan Republic. Activities of regional non-governmental organisations shall cover two or more administrative-territorial units of the Republic of Azerbaijan. Local non-government organisations shall operate within one administrative-territorial unit. ..."

Article 10. Members of public associations

"3. The issue of acquiring and termination of membership in a public association shall be determined by its charter. Charter of a public association shall guarantee the right to lodge a complaint, within the association and in court, regarding termination of membership. ..."

Article 16. State registration of non-governmental organisations

"16.1. The state registration of non-governmental organisations shall be carried out by the relevant executive authority in accordance with the laws of the Republic of Azerbaijan on state registration of legal entities.

16.2. Non-governmental organisations shall acquire the status of a legal entity only after passing the state registration."

Article 17. Refusal of state registration

"17.1. Non-governmental organisations can be refused registration only if there is another organisation existing under the same name, or if the documents submitted for registration contradict the Constitution of the Republic of Azerbaijan, this law and other laws of the Republic of Azerbaijan, or contain false information.

17.2. Decision on refusal of state registration shall be presented in writing to the representative of the non-governmental organisation, with indication of the grounds for refusal as well as the provisions and articles of the legislation breached upon preparation of the foundation documents.

17.3. Refusal of registration shall not prevent the organisation from resubmitting its registration documents after rectification of the breaches.

17.4. The decision on refusal of state registration may be challenged in court."

Article 25. Principles of management of public associations

"25.1. The charter of a public association shall, in accordance with this law and other laws, define the structure and composition of the public association; the competence, formation procedure and term of office of its managing bodies; as well as the procedure for decision-making and representation of the public association. ..."

E. Law "On Grant" of 17 April 1998

Article 1. Grant

"1. A grant is an assistance rendered pursuant to this law in order to develop and implement humanitarian, social and ecological projects, works on rehabilitation of destroyed objects of industrial and social purpose, of infrastructure in the territories damaged as a result of the war and disaster, programs in the field of education, health, culture, legal advice, information, publishing, sport, scientific research and design programs as well as other programs of importance for the state and public. A grant shall only be provided for a specific purpose (or purposes).

2. A grant shall be provided in the financial and/or in any other material form. The grant shall be rendered gratis and its repayment in any form may not be requested. ..."

Article 3. Recipient

"1. A grant beneficiary is a recipient in respect of a donor.

2. The following may be a recipient:

- The Azerbaijani State in the person of the relevant executive authority;

- Municipal authorities;

- Resident and non-resident legal entities, their branches, representative offices and departments carrying out activity in the Republic of Azerbaijan, whose main objective, according to their articles of association, is charitable activities or implementation of projects and programs that may be a subject of a grant, and which are not aimed at direct generation of profit resulting from the grant; and

- Individuals in the Republic of Azerbaijan. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

29. The applicants complained that the failure by the Ministry of Justice to register their organisation in a timely manner constituted an interference with their freedom of association. As the Ministry evaded registering the organisation by significantly delaying the examination of their registration requests and breaching the statutory time-limits for the official response, their association could not acquire legal status. This allegedly constituted a violation of their right to freedom of association, as provided in Article 11 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

1. Compatibility ratione temporis

30. The Court observes that part of the events giving rise to the applicants' complaint relate to the period before 15 April 2002, the date of the Convention's entry into force with respect to Azerbaijan. The Court notes that it is only competent to examine complaints of violations of the Convention arising from events that have occurred after the Convention had

entered into force with respect to the High Contracting Party concerned (see e.g. *Kazimova v. Azerbaijan* (dec.), no. 40368/02, 6 March 2003).

31. Accordingly, the Court's competence is limited to the part of the complaint relating to the events that occurred after 15 April 2002, whereas the events relating to the applicants' first and second registration requests as well as part of the events relating to the third registration request fall outside of its competence *ratione temporis*. Nevertheless, where necessary, the Court shall take into account the state of affairs as it existed at the beginning of the period under consideration.

2. The applicants' victim status

32. Referring to the fact that the Ministry of Justice registered the association on 18 February 2005, the Government submitted that the matter had been resolved and requested the Court to strike the application out of the list of cases. The Court considers that, in substance, this request amounted to an assertion that the applicants were no longer victims of the alleged violation of the Convention.

33. The applicants disagreed. They noted that the domestic authorities did not acknowledge the violation of their right to freedom of association and did not afford redress for this violation.

34. The Court recalls that the word “victim” denotes the person directly affected by the act or omission which is in issue (see e.g. *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 13, § 27). In the present case the applicants, all of whom were the original founders of the public association, complained about arbitrary delays in the state registration of the association, as a result of which the association could not obtain a legal entity status and function properly. This directly affected its founders' right to freedom of association, depriving them of a possibility to jointly or individually pursue the aims they had laid down in the association's charter and, thus, to exercise the right in question (see, *mutatis mutandis*, *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1612, § 31; see also paragraphs 54-60 below).

35. The Court further recalls that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, p. 846, § 36; and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application.

36. The Court observes that the mere fact that the authorities finally registered the association after a significant delay cannot be viewed in this

case as automatically depriving the applicants of their victim status under the Convention.

37. The Court notes that, up to December 2006, neither the domestic courts nor any other domestic authorities have expressly acknowledged that there was an interference with the applicants' Convention rights. Although the Constitutional Court quashed the earlier judgments and decisions of the courts of general jurisdiction, the Constitutional Court itself did not find a violation of the applicants' right to freedom of association. It merely ordered a new examination of the issue of whether this right of the applicants had been violated. Finally, on 6 December 2006, the Court of Appeal acknowledged a breach of the domestic procedural requirements by the relevant official of the State Registration Department of the Ministry of Justice and ordered him to pay moral compensation to the applicants. Arguably, this constituted an acknowledgement of a violation of the applicants' right to freedom of association by the State. However, the Court does not consider it necessary to determine this issue for the following reason.

38. Even assuming that the authorities have acknowledged a violation of the applicants' Convention rights, the Court notes that the moral compensation was finally awarded in the latest set of judicial proceedings only to three of the four applicants in the present case, despite the fact that all four of the applicants demanded such compensation in all previous proceedings. Moreover, having regard to the fact that the state registration of the association had been delayed for a period of almost four years and that the applicants had to defend their rights at numerous court hearings in several sets of judicial proceedings, the Court finds that the amount of EUR 705 awarded collectively to three applicants cannot be considered as a full redress for the breach of the applicants' Convention rights. In such circumstances, the Court finds that the state registration of the association, which clearly constituted a measure favourable to the applicants, was nevertheless insufficient to deprive them of their “victim” status.

39. Accordingly, the Court rejects the Government's objection as to the applicants' loss of victim status.

3. Domestic remedies

40. The Government submitted that, at the time of lodging of their application with the Court, the applicants had not exhausted the available domestic remedies. In particular, they had not filed an additional cassation complaint with the Plenum of the Supreme Court. Moreover, the Government contended that the applicants complained to the domestic courts only about the allegedly unlawful actions of the Ministry of Justice, and did not specifically raise a complaint that these actions amounted to a violation of their right to freedom of association.

41. The applicants submitted that they were not required to file an additional cassation complaint before lodging the present application with the Court, because the Plenum of the Supreme Court was not an effective remedy. They also maintained that their complaint about the Ministry's unlawful "evading the registration of the non-governmental organisation" constituted a substantive complaint about a violation of their freedom of association.

42. The Court recalls that, where an applicant continues to exhaust the domestic remedies after the lodging of his application but before the decision on its admissibility is reached, the Court examines the question of exhaustion of domestic remedies as of the time it is called upon to decide on the admissibility of the complaint, and not as of the time of lodging of the application (see e.g. *Yolcu v. Turkey* (dec.), no. 34684/97, 3 May 2001).

43. The Court further recalls its previous finding that the additional cassation procedure in the Plenum of the Supreme Court of the Republic of Azerbaijan did not constitute an ordinary and effective remedy which the applicants were required to exhaust within the meaning of Article 35 § 1 of the Convention (see *Babayev v. Azerbaijan* (dec.), no. 36454/03, 27 May 2004). However, the Court observes that, in any event, after lodging the present application with the Court, the applicants actually filed an additional cassation complaint, which was rejected by the President of the Supreme Court. Further, their constitutional complaint was declared admissible and examined on the merits by the Constitutional Court, which quashed the previous judgments and decisions and ordered a new examination of the case. Thereafter, the applicants once again exhausted all the ordinary remedies available to them under the domestic law.

44. As for the Government's argument that the applicants did not expressly complain before the domestic authorities about a violation of their right to freedom of association, the Court considers that their lawsuit against the Ministry of Justice and demand for moral compensation constituted such a complaint in substance. This is confirmed by the decision of the Constitutional Court, which found that, under the domestic law, the subject matter of the domestic litigation in the courts of general jurisdiction was the alleged violation of the applicants' right to freedom of association.

45. For these reasons, the Court rejects the Government's objection as to exhaustion of domestic remedies.

4. Conclusion

46. Having regard to the above conclusions, the Court further notes that the complaint is not inadmissible on any other grounds and that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be declared admissible in the part relating to the events that took place after 15 April 2002.

B. Merits

1. The parties' submissions

47. The Government argued that there was no interference with the applicants' freedom of association. Firstly, the Government noted that the Ministry did not refuse to register the association. Instead, it merely returned the association's foundation documents to the founders so that the latter could rectify the shortcomings and ensure that they complied with the requirements of the domestic law. The Government contended that, although "a refusal to register a public association might be regarded as a violation of the right to freedom of association, the delayed response to [an application for state registration] is not a violation of this right."

48. Secondly, the Government argued that the delay in registration only resulted in the association's temporary inability to acquire the status of a legal entity. However, under the domestic law, lack of the status of a legal entity did not prevent the association from continuing its activities and entering into various contracts, such as the lease of premises, opening a bank account, and other activities.

49. Furthermore, the Government noted that it was the obligation of the association's founders to ensure that the association's foundation documents complied with the legal requirements, which was a pre-requisite for the state registration by the Ministry of Justice. The applicants, however, "continuously refused to bring their constituent documents in conformity with the existing legislation, and were seeking to obtain ... registration on the basis [of] documents [which contradicted] the law. It was not the obligation of the Ministry of Justice to rectify the errors, but to advise the applicants to do this."

50. As to the Ministry's breaches of the statutory ten- and five-day registration periods, the Government argued that it was merely a result of the Ministry's heavy workload.

51. The applicants argued that the delays in responding to their registration requests, which were significantly beyond the time-limits set by the domestic law, constituted an interference with, and a violation of, their right to freedom of association. The applicants maintained that such delays were in breach of the domestic law. Moreover, the applicants noted that the Ministry cited a new, different deficiency in the association's foundation documents each time it returned the documents to the founders. However, under the domestic law, the Ministry was obliged to identify all the deficiencies after the first registration request, and after these deficiencies had been rectified by the founders upon their second registration request, the Ministry was obliged to issue a final decision, i.e. either register the association or issue an official refusal to register it.

52. The applicants also noted that, without acquiring a status of a legal entity, the association was unable to function properly and to engage in its primary activities. Specifically, under the domestic law, only duly registered legal entities could be "grant" recipients. Taking into consideration that "grants" were the main (and in most cases, the only) financial source for non-governmental organisations' activities, the association could not properly function without a status of a legal entity. Moreover, only state-registered non-governmental organisations could enjoy tax preferences under the taxation law and engage in a number of financial and other activities.

53. Finally, the applicants disagreed with the Government's submission that they were not diligent in rectifying the deficiencies in the association's foundation documents. They contended that their prompt compliance with each of the Ministry's remarks and the number of registration requests showed their diligence in trying to bring the documents into conformity with the existing legislation.

2. The Court's assessment

(a) Whether there has been an interference

54. The Court reiterates that the right to form an association is an inherent part of the right set forth in Article 11. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos and Others*, cited above, p. 1614, § 40).

55. The ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning. The Court has consistently held the view that a refusal by the domestic authorities to grant legal entity status to an association of individuals amounts to an interference with the applicants' exercise of their right to freedom of association (see e.g. *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 52, 17 February 2004; *Sidiropoulos*, cited above, p. 1612, § 31; and *APEH Üldözötteinek Szövetsége and Others v. Hungary* (dec.), no. 32367/96, 31 August 1999).

56. The Court takes note of the Government's argument that, under the domestic law applicable at that time, the return of foundation documents for

rectification of deficiencies did not constitute a formal and final refusal to register the association or a total ban on its activities. However, the Court observes that, in the present case, the registration procedure was substantially delayed due to the Ministry of Justice's continuous failure to respond to the applicants' registration requests within the time-limits set by the domestic law on state registration. More specifically, since the date of the lodging of the applicants' first registration request on 9 April 2001, almost four years passed until the applicants' association was finally registered on 18 February 2005. Almost three years of that total period fall within the period after Azerbaijan's ratification of the Convention on 15 April 2002.

57. Having regard to the facts of the case, the Court observes that, each time the registration documents were returned to the applicants, they rectified the deficiencies noted in the Ministry's letters and re-submitted a new registration request in a prompt manner (usually within less than one month after receiving the Ministry's comments). On the other hand, the Ministry delayed the response to each of the applicants' registration requests for several months. Accordingly, it cannot be disputed that the delay of almost four years in the association's registration is to a large extent attributable to the Ministry's failure to respond in a timely manner.

58. The association was in fact deprived of a legal entity status for the entire duration of this delayed registration procedure. Although the return of documents for rectification of deficiencies may not be regarded as a formal and final refusal to register the association under the domestic law, the Court, leaving aside the domestic interpretations of “formal refusal”, considers that the repeated failures by the Ministry of Justice to issue a definitive decision on state registration of the association amounted to *de facto* refusals to register the association.

59. Moreover, the Court notes that, even assuming that theoretically the association had a right to exist pending the state registration, the domestic law effectively restricted the association's ability to function properly without the legal entity status. It could not, *inter alia*, receive any “grants” or financial donations which constituted one of the main sources of financing of non-governmental organisations in Azerbaijan (see Article 3 of the Law *On Grant*). Without proper financing, the association was not able to engage in charitable activities which constituted the main purpose of its existence. It is therefore apparent that, lacking the status of a legal entity, the association's legal capacity was not identical to that of state-registered non-governmental organisations.

60. The Court considers that, whereas the applicants were the founders of the association, the significant delays in its state registration, which resulted in its prolonged inability to acquire the status of a legal entity, amounted to an interference by the authorities with the applicants' exercise of their right to freedom of association.

(b) Whether the interference was justified

61. Such interference will not be justified under the terms of Article 11 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 of that Article and was "necessary in a democratic society" for the achievement of that aim or aims (see e.g. *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 104, ECHR 1999-III).

62. The Court recalls that the expression "prescribed by law" requires that the impugned measure should have some basis in domestic law and refers to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see e.g. *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I; *Adalı v. Turkey*, no. 38187/97, § 272, 31 March 2005; and *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III). For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI; and *Maestri*, cited above, § 30).

63. The Court is aware of the fact that, since the time of the events giving rise to the present complaint, certain amendments have been made to the Azerbaijani legislation on state registration of legal entities. However, for the purposes of this complaint, the Court will have regard to the domestic law as it was applicable at the relevant time.

64. The Court observes that Article 9 of the Law *On State Registration of Legal Entities* of 6 February 1996 set a ten-day time-limit for the Ministry to issue a decision on the state registration of a legal entity or refusal to register it. In the event the legal entity's foundation documents contained rectifiable deficiencies, the Ministry could return the documents to the founders within the same ten-day time-limit with the instructions to rectify those deficiencies. After the registration request was re-submitted following such rectification, the law provided for a five-day time-limit for official response. However, in the present case, the Ministry delayed its response to each registration request by several months. In particular, the response to the applicants' third registration request of 2 October 2001 was delayed by more than nine months, whereas the law clearly required it to be issued within 5 days. The response to the fourth registration request was

delayed by approximately six months. In such circumstances, the Court cannot but conclude that the Ministry violated the procedural time-limits.

65. It follows that there was no basis in the domestic law for such significant delays. The Government's argument that the delays were caused by the Ministry's heavy workload cannot extenuate the undisputable fact that, by delaying the examination of the registration requests for unreasonably long periods, the Ministry breached the procedural requirements of the domestic law. It is the duty of the Contracting State to organise its domestic state-registration system and take necessary remedial measures so as to allow the relevant authorities to comply with the time-limits imposed by its own law and to avoid any unreasonable delays in this respect (see, by analogy, *Martins Moreira v. Portugal*, judgment of 26 October 1988, Series A no. 143, p. 19, §§ 53-54; *Unión Alimentaria Sanders S.A. v. Spain*, judgment of 7 July 1989, Series A no. 157, p. 15, § 40; and *Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, pp. 12-13, § 29). In the present case, there is no evidence as to whether any measures have ever been undertaken by the State authorities to remedy the situation at the material time. The Court therefore considers that the Ministry's alleged heavy workload was not a good excuse for such unreasonable delays as in the present case.

66. Furthermore, as to the quality of the law in question, the Court considers that the law did not establish with sufficient precision the consequences of the Ministry's failure to take action within the statutory time-limits. In particular, the law did not provide for an automatic registration of a legal entity or any other legal consequences in the event the Ministry failed to take any action in a timely manner, thus effectively defeating the very object of the procedural deadlines. Moreover, the law did not specify a limit on the number of times the Ministry could return documents to the founders “with no action taken”, thus enabling it, in addition to arbitrary delays in the examination of each separate registration request, to arbitrarily prolong the whole registration procedure without issuing a final decision by continuously finding new deficiencies in the registration documents and returning them to the founders for rectification. Accordingly, the law did not afford the applicants sufficient legal protection against the arbitrary actions of the Ministry of Justice.

67. Having found that the Ministry of Justice breached the statutory time-limits for the association's state registration and that the domestic law did not afford sufficient protection against such delays, the Court concludes that the interference was not “prescribed by law” within the meaning of Article 11 § 2 of the Convention.

68. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 11 § 2 (legitimate aim and necessity of the interference) have been complied with.

69. There has accordingly been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

70. The applicants complained that, contrary to Article 6 § 1 of the Convention, the domestic courts had not been independent and impartial. They noted that, in accordance with the law applicable at the time of the events in question, the selection of candidates to judicial positions in Azerbaijan was performed by the Judicial Legal Council under the President of the Republic of Azerbaijan, presided over by the Minister of Justice. The applicants alleged that, in such circumstances, the judges of the domestic courts could not be independent and impartial in the proceedings against the Ministry of Justice, because their subsequent re-appointment to the courts would depend on the discretion of the Minister of Justice as the Chairman of the Judicial Legal Council. Furthermore, in conjunction with Article 6 § 1, the applicants complained under Article 13 of the Convention that the domestic courts could not be considered as an effective remedy because they had never ruled against the Ministry of Justice in cases concerning the delays in registration of non-governmental organisations.

71. The Court notes that these complaints are essentially the same as those raised before the Court in the case of *Asadov and Others v. Azerbaijan* ((dec.), no. 138/03, 12 January 2006). In that case, the Court found that the complaints were manifestly ill-founded. In the absence of any substantially new arguments or evidence submitted in the present case, the Court does not find any reason to deviate from its reasoning in the *Asadov and Others* case.

72. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

74. The applicants claimed EUR 25,000 in respect of pecuniary damage. They argued that, as a result of the Ministry's failure to register the association for almost four years, they could not secure any financial resources for the association's activity during the period of 2001-2005.

75. No observations were made in this respect by the Government.

76. The Court notes that the applicants have not submitted any documentary evidence or any other justification for their claim. In such circumstances, the Court cannot speculate whether the applicants would indeed be able to secure any funding for their association if it had been registered in a timely manner, and if so, in what amount. The Court, therefore, rejects the applicants' claim in respect of pecuniary damage.

2. Non-pecuniary damage

77. The applicants claimed EUR 10,000 each, making a total of EUR 40,000, in respect of non-pecuniary damage.

78. The Government argued that this amount was unjustified and excessive.

79. In the Court's view, the arbitrary delay in the state registration of the association must have been highly frustrating for the applicants as its founders. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants, collectively, the sum of EUR 4,000 in respect of moral damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

80. The applicants also claimed EUR 5,200 for the costs and expenses incurred before the domestic courts and EUR 199 for those incurred before the Court (including the translation, postal and photocopy expenses, but not including any legal fees).

81. The Government noted that the applicants did not submit any proof of expenses and that they should not be awarded any compensation for costs and expenses in the domestic proceedings.

82. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award

the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable on this amount.

C. Default interest

83. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicants' right to freedom of association admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, a total of EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and a total of EUR 2,000 (two thousand euros) in respect of costs and expenses, to be converted into New Azerbaijani manats at the rate applicable on the date of settlement, plus any tax that may be chargeable on these amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President