



EXECUTION OF THE JUDGEMENT MAMMADOV V. AZERBAIJAN

On December the 5th of last year, the Committee of Ministers of the Council of Europe adopted Resolution 429 posing for the first time to the European Court of Human Rights the question on whether, according to art.46 para 4 of the Convention, Azerbaijan had executed the judgment of 22 May 2014 concerning the application of Mammadov v. Azerbaijan (n. 15172/13).

The execution procedure of the judgments of the European Court of Human Rights has evolved during the years, from its original provisions in the 1950 Convention to the adoption of its Protocol 14 in 2010, which produced a substantial innovation, by conferring to the Committee of Ministers the power to send to the European Court of Human Rights the decision of a State concerning the measures adopted in order to give execution to a judgment. In that way, the decision of the European Court, finding a violation of art.46, para 1, by the State in question, might constitute the legal basis for the Committee to adopt the necessary measures, in substance those already provided by the statute of the Council of Europe and consisting in the temporary decision on the suspension of the State from the Organisation, or on its definitive expulsion.

The Committee of Ministers has adopted a number of rules, which determines today a very detailed procedure. In the case at stake, the most relevant aspect is the detention of the applicant Mammadov, declared illegal by the Court, and to which Azerbaijan did not give any execution considering that the applicant is still in prison. The Court should therefore ascertain the violation perpetrated by Azerbaijan unless the applicant will not be released in the meantime. In such case, the general measures deriving from the judgment should be verified.

That solution of the problem poses different scenarios to be assessed, also from a political and diplomatic viewpoint, considering, on one side, the negative effects that the suspension and the possible expulsion of the State from the Organisation can have, and, on the other side, the effect of a missed or insufficient solution certainly detrimental to the credibility of the whole Conventional system; while not ignoring, at the same time, the reluctant position of some States in giving execution to the judgments of the Court.