



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAFAROVA v. AZERBAIJAN

(Application no. 35507/07)

JUDGMENT

STRASBOURG

14 October 2010

FINAL

14/01/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Safarova v. Azerbaijan,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, Deputy Section Registrar,

Having deliberated in private on 23 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 35507/07) 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 an Azerbaijani national, Ms Zemfira Ali-Huseyn qizi Safarova (*Zemfira Əli-Hüseyn qızı Səfərova* - “the applicant”), on 31 July 2007.

2. The applicant was represented by Mr M. Mustafayev, a lawyer practising in Azerbaijan. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç Asgarov.

3. The applicant alleged, in particular, that the failure to enforce the judgment of 3 July 2003 in her favour had violated her rights to a fair trial and to an effective remedy as guaranteed by Articles 6 and 13 of the Convention and her property rights under Article 1 of Protocol No. 1 to the Convention.

4. On 7 November 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

5. The applicant was born in 1960 and lives in Baku.

6. The applicant was the owner of non-residential premises with an area of 350 square metres situated in Baku (“the Premises”). The ownership

certificate relative to the Premises was delivered to the applicant on 17 July 1998 and her ownership right was duly registered in official records.

7. Since 1993 the Premises had been occupied by Police Station no. 17 of the Narimanov District Police Department (“the Police Station”).

8. The applicant wrote numerous letters to the Ministry of Internal Affairs, the Ministry of Economic Development, the Baku City Executive Authority, the Ombudsman's Office, and other public authorities, complaining of unlawful occupation of the Premises by the Police Station. In 2002 and 2003, the applicant was informed by letters from the Ministry of Internal Affairs and the Baku City Executive Authority that the Police Station would vacate the Premises as soon as it was provided with other premises by the Ministry of Economic Development.

9. On 13 May 2003 the applicant lodged a lawsuit with the Narimanov District Court claiming that she was the lawful owner of the Premises and asking the court to order the eviction of the Police Station.

10. On 3 July 2003 the Narimanov District Court granted the applicant's request. The court held that the applicant was the lawful owner of the Premises on the basis of the ownership certificate of 17 July 1998 and that there was no legal basis for the installation of the Police Station there. Moreover, the court stated that the Ministry of Economic Development should provide the Police Station with other premises.

11. No appeals were filed against that judgment and, pursuant to domestic law, it became enforceable within one month after its delivery.

12. According to the case file, between 2003 and 2006 the Ministry of Economic Development offered the Police Station different premises. However the Head of the Police Station refused to move to those premises stating that they were not suitable for a police station.

13. On 10 November 2008 the Narimanov District Executive Authority allocated a plot of land for the construction of a building for the Police Station.

14. In 2009 the Ministry of Internal Affairs commenced an action against the applicant challenging the lawfulness of the applicant's ownership rights in respect of the Premises. On 8 April 2009 the Narimanov District Court rejected the Ministry's claim. The court found that the Ministry of Internal Affairs had no right to lodge a claim concerning the Premises, that the time-limits provided for challenging the applicant's ownership right in respect of the Premises had expired, and that the matter was *res judicata* as the applicant's ownership had been confirmed by the judgment of 3 July 2003.

15. On 15 April 2009 a criminal case was launched by the Ministry of Internal Affairs concerning the allegedly unlawful acquisition of the Premises by the applicant and her husband. On 17 April 2009 the Sabayil District Court authorised a search and seizure at the office of a company managed by the applicant's husband. The case file does not contain any

other material concerning subsequent developments and the results of this investigation and of the criminal case.

16. Moreover, it appears from the case file that in April 2009 the State Committee for the Management of State Property lodged a civil action against the applicant alleging that her ownership had been unlawful. The case file does not contain any material on the results of this legal action.

17. As at the time of the Court's last communication with the applicant, the judgment of 3 July 2003 remained unenforced.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 AND ARTICLE 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

18. Relying on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained about the non-enforcement of the Narimanov District Court's judgment of 3 July 2003. Article 6 § 1 of the Convention reads, as far as relevant, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Article 13 of the Convention provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Article 1 of Protocol No. 1 to the Convention reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

19. The Government argued that the applicant had failed to exhaust domestic remedies. In particular, the Government alleged that the applicant could have lodged a civil action against the relevant office of judicial

enforcement officers for their alleged failure to enforce the judgment of 3 July 2003. However the applicant had failed to make use of this remedy.

20. The applicant disagreed with the Government and maintained her complaints.

21. The Court notes that a similar objection had been raised by the Government in earlier cases and was dismissed by the Court (see, for example, *Mirzayev v. Azerbaijan*, no. 50187/06, §§ 24-28, 3 December 2009). The Court refers to its reasoning in the above-mentioned case and sees no ground to depart from it. Therefore the Government's objection should be dismissed.

22. The Court further notes that the application is not inadmissible on any other grounds and is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

23. The Government submitted that certain steps were being taken in order to comply with the judgment of 3 July 2003. They noted that the Ministry of Economic Development had offered different premises to the Police Station. However, the Head of the Police Station had refused to move to those places stating that they were not suitable for a police station. On 10 November 2008 the Narimanov District Executive Authority had allocated a plot of land for the construction of a building for the Police Station. The Government noted that the applicant's Premises would be vacated as soon as construction of the building was completed.

24. The applicant reiterated her complaint, noting that the continued non-enforcement of the judgment of 3 July 2003 had infringed her right to a fair trial and her right to peaceful enjoyment of her possessions.

2. The Court's assessment

(a) Articles 6 and 13 of the Convention

25. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, it embodies the “right to a court”, of which the right of access – that is, the right to institute proceedings before courts in civil matters – constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public

and expeditious – without protecting the implementation of judicial decisions. To construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law, which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

26. The Court further notes that a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). The Court observes that in the present case the continuing non-enforcement of the judgment of 3 July 2003 delivered in favour of the applicant deprived her of the benefits of success in the litigation which concerned her property rights.

27. The Court notes that the Narimanov District Court's judgment of 3 July 2003 has remained unenforced for more than seven years. The Court finds that no reasonable justification was advanced by the Government for this delay. The Court therefore considers that by failing to take the necessary measures to comply with the final judgment in the instant case, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect (see *Burdov*, cited above, § 37). There has accordingly been a violation of Article 6 § 1 of the Convention.

28. In view of the above finding, the Court does not consider it necessary to rule on the complaint under Article 13 of the Convention because Article 6 is the *lex specialis* in regard to this part of the application (see, for example, *Efendiyeva v. Azerbaijan*, no. 31556/03, § 59, 25 October 2007, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 32, 6 March 2003).

(b) Article 1 of Protocol No. 1 to the Convention

29. The Court notes, firstly, that the Premises were owned by the applicant. It follows that the Premises constituted her “possessions” within the meaning of Article 1 of Protocol No. 1.

30. Moreover, the applicant's ownership right in respect of the Premises was confirmed by the judgment of 3 July 2003 which ordered the eviction of the Police Station from the Premises. The judgment had become final and enforcement proceedings had been instituted, giving the applicant a right to recover the use of the Premises. It follows that the inability of the applicant to obtain the execution of this judgment constituted an interference with her right to peaceful enjoyment of her possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1. For the reasons set out in paragraph 28 above, the Court finds that no acceptable

justification for this interference has been advanced by the Government. Accordingly, there has also been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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*

32. The applicant claimed 1,627,142 US dollars (USD) in respect of pecuniary damage. She argued that owing to the non-enforcement of the judgment, she had lost the profit she could otherwise have made by renting out the Premises. The amount claimed included lost rent (USD 187,592) and the alleged current market value of the Premises (USD 1,439,550). The estimates concerning the approximate rent and the market value of the Premises were obtained from an association specialising in these matters.

33. The Government contested the applicant's claims as wholly excessive and unjustified. The Government argued that the applicant could not claim any compensation for the market value of the Premises because the property had not been expropriated. The Government further noted that the compensation claimed for lost rent was unsubstantiated.

34. As for the part of the claim relating to the market value of the Premises, the Court notes that delay in execution of the judgment of 3 July 2003 could not be considered as a permanent deprivation of the applicant's property rights to the Premises. The Court therefore considers that this part of the applicant's claim for pecuniary damage should be rejected.

35. However, the Court considers that the applicant must have suffered pecuniary damage as a result of her lack of control over the Premises and finds that there is causal link between the violations found and the damage claimed in respect of the lost rent (compare *Radanović v. Croatia*, no. 9056/02, §§ 62-66, 21 December 2006).

36. Having examined the parties' submissions, the Court will take the amount set forth in the local association's assessment submitted by the applicant as a reference point, taking into consideration the fact that this particular association's estimates had already been relied on by the Government in a number of previous non-enforcement cases against

Azerbaijan (see, for example, *Gulmammadova v. Azerbaijan*, no. 38798/07, 22 April 2010, and *Hasanov v. Azerbaijan*, no. 50757/07, 22 April 2010).

37. In making its assessment, the Court takes into account the fact that the applicant would inevitably have experienced certain delays in finding suitable tenants and would have incurred certain maintenance expenses in connection with the Premises. She would have also been subjected to taxation (see *Prodan v. Moldova*, no. 49806/99, § 74, ECHR 2004-III (extracts); *Popov v. Moldova (no. 1)* (just satisfaction), no. 74153/01, § 13, 17 January 2006; and *Radanović*, cited above, § 65). Having regard to the foregoing, and deciding on an equitable basis, the Court awards the applicant 80,000 euros (EUR) on account of lost rent.

2. Non-pecuniary damage

38. The applicant claimed USD 50,000 in respect of non-pecuniary damage.

39. The Government considered the sum excessive and asked the Court to review the amount of compensation should it find a violation of the Convention provisions.

40. The Court considers that the applicant must have sustained some non-pecuniary damage as a result of the lengthy non-enforcement of the final judgment in her favour. However, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 4,800 under this head, plus any tax that may be chargeable on this amount.

41. Moreover, the Court considers that, in so far as the judgment of 3 July 2003 remains in force, the State's outstanding obligation to enforce it cannot be disputed. Accordingly the applicant is still entitled to enforcement of that judgment. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant, as far as possible, is put in the position she would have been in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). Having regard to the violation found, the Court finds that this principle applies to the present case. It therefore considers that the Government shall ensure the enforcement of the judgment of 3 July 2003.

B. Costs and expenses

42. The applicant did not submit a claim for costs and expenses incurred before the Court. Accordingly, the Court considers that there is no call to award her any sum under this head.

C. Default interest

43. The Court considers it appropriate that 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds* that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall ensure the enforcement of the domestic court's judgment of 3 July 2003;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 80,000 (eighty thousand euros) in respect of pecuniary damage, and EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, to be converted into new Azerbaijani manats at the rate applicable at the date of settlement;
 - (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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President