



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

FIRST SECTION

CASE OF FABER FIRM AND JAFAROV v. AZERBAIJAN

(Application no. 3365/08)

JUDGMENT

STRASBOURG

25 November 2010

FINAL

04/03/2011

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

In the case of Faber Firm and Jafarov v. Azerbaijan,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 4 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 3365/08) 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 Faber Firm (“the applicant company”), a company with its office in Baku and an Azerbaijani national, Mr Sabir Jafarov (“the applicant”), together referred to as “the applicants”, on 8 January 2008.

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 Ç. Asgarov.

3. The applicants alleged, in particular, that the failure to enforce the judgment of 12 October 2005 violated their right to a fair trial and their property rights, as guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. On 27 August 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, Mr Sabir Jafarov, was born in 1958 and lives in Azerbaijan. He is the sole founder and the director of the applicant company incorporated in Baku. He submitted the present application on his own behalf and on behalf of the applicant company.

6. By an order of 24 July 2000, issued by the Baku City Executive Authority (“the BCEA”), the applicant company was provided with a plot of land of 400 square metres situated in Baku with the purpose of construction of an automobile showroom. On 13 April 2002 the applicant company concluded a tenancy agreement with the BCEA concerning a right of use of this plot of land for a period of forty-nine years.

7. It appears from the case file that after obtaining the relevant construction permit from the competent authorities, the applicant company began to carry out construction work on the land in question. However, in August 2002 the BCEA requested the applicant company to suspend the construction work. By an order of 2 January 2003 the BCEA annulled its order of 24 July 2000 and instructed that all the construction carried out by the applicant company up to that point be destroyed.

8. On an unspecified date, the applicant company brought an action against the BCEA, asking for annulment of the order of 2 January 2003. The applicant company also claimed compensation in respect of pecuniary and non-pecuniary damage caused by the destruction of the structures already built on the land plot.

9. On 10 August 2005 Local Economic Court No. 1 delivered a judgment granting the applicant company's claim in part. The court held that the BCEA's order of 2 January 2003 had been unlawful and that the applicant company's right of use of the plot of land should be restored. Moreover, the court awarded the applicant company 104,822,212 Old Azerbaijani manats (AZM) in compensation for pecuniary damage, leaving the claim in respect of non-pecuniary damage unexamined. The judgment was appealed by both parties in the proceedings.

10. On 12 October 2005 the Economic Court (acting as an appellate instance) delivered a new judgment on the merits. The Economic Court upheld the lower court's judgment in the part concerning the unlawfulness of the BCEA's order of 2 January 2003. However, the Economic Court dismissed the remainder of the applicant company's claims, including the claim in respect of pecuniary damage.

11. On 23 December 2005 the Supreme Court upheld the Economic Court's judgment, noting that the material and procedural law had been applied correctly.

12. It appears from the case file that, despite the applicant company's numerous demands and the fact that the writ of execution had been sent several times to BCEA for execution, the applicant company's right of use of the plot of land was not restored.

THE LAW

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

13. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants complained of the non-enforcement of the Economic Court's judgment of 12 October 2005. Article 6 of the Convention reads, as far as relevant, as follows:

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

Article 1 of Protocol No. 1 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

14. The Government argued that the applicants had failed to exhaust domestic remedies. In particular, the Government alleged that the applicants could have challenged the domestic authorities' failure to enforce the judgment of 12 October 2005 before the domestic courts. In this regard, the Government noted that the applicants had not instituted any proceedings against the relevant Department of Enforcement Officers.

15. The applicant disagreed with the Government and maintained his complaints.

16. The Court notes that a similar objection had been raised by the Government in similar cases and had been 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.

17. The Court further notes that the application is not inadmissible on any other grounds and 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

18. The Government accepted that the domestic courts recognised the applicants' right over the land plot. However, they argued that as the land plot was located within the security zone surrounding (a new) important highway, it could not be used by private persons. The Government further submitted that the BCEA had informed, by two letters, the Department of Enforcement Officers and the applicants on the impossibility to restore the applicants' right to the land plot and therefore proposed to deliver to the applicants another land plot in Baku. According to the Government, the applicants refused to accept the proposed land plot.

19. The applicants reiterated their complaints, noting that the continued non-enforcement of the judgment of 12 October 2005 had infringed their right to a fair trial and their right to peaceful enjoyment of their possessions. They did not comment on the Government's submissions concerning the BCEA's proposal of another land plot.

2. The Court's assessment

(a) Articles 6 of the Convention

20. 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).

21. 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 delivered in favour of the applicants deprived them of benefiting from the success of the litigation which concerned their property rights.

22. In the Government's view, this delay had been justified by the impossibility of the access to a land plot located within the security zone surrounding a highway. The Court cannot accept this argument as a sufficient reason to justify the non-enforcement of the judgment in the applicant's favour, all the more because this issue was not discussed before the domestic courts and because it is not the Court's task to substitute itself for the national authorities and to evaluate the relevance of this argument. Furthermore the Government submitted that the applicant did not accept the BCEA's proposal of a new land plot. However, the Court observes that the BCEA's letters generally concerned the possibility of allocating a new land plot to the applicants but did not contain any specific information concerning any such new land plot. Furthermore, the case file does not contain any document proving that the applicants received those letters. The Court observes that the Government submitted no proof capable of persuading it that they were in any way objectively precluded from complying speedily with the judgment in question, or that they attempted to find any satisfactory solution which would have mitigated the detrimental effects of the non-enforcement on the applicants.

23. In such circumstances, the Court finds that, by failing for many years to take necessary measures complying with the enforceable judgment in the applicants' favour, the authorities deprived the provisions of Article 6 § 1 of all useful effect. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

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

24. The Court reiterates that a property-related claim can constitute a "possession" if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B). The Court considers that, by virtue of the judgment of 12 October 2005, the applicants' claim had been sufficiently established so as to constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. The impossibility of obtaining the execution of the judgment of 12 October 2005 constituted an interference with the applicants' right to peaceful enjoyment of their possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Burdov*, cited above, § 40, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003). The Government have not advanced any acceptable justification for this interference.

25. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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*

27. The applicants claimed a total 143,135.5 new Azerbaijani manat (AZN) in respect of pecuniary damage. This amount included the alleged expenses related to the initial construction works on the land plot (AZN 5,000), an amount the applicants paid to a bank in connection with a loan necessary for subsequent construction works on the land plot (AZN 112,831.24), an amount that the applicants paid to the BCEA as a lease fee and an amount including other payments to relevant public bodies for various administrative formalities (AZN 8,717.43), and an amount the individual applicant allegedly paid for his medical treatment (AZN 16,586.63) further to the stress and anxiety related to his inability to use the land plot and to the material loss he suffered.

28. The Government contested the claim noting that the applicants had failed to prove their claims. In particular, the Government argued that the applicants had not submitted any proof on expenses related to the initial construction work on the land plot. They further submitted that the receipts of payments to the bank in connection with the loan agreement and to the different public bodies did not prove, as the applicants alleged, the purpose of this loan and payments. The Government further submitted that the lease fee and other payments related to the administrative formalities were the applicants' contractual obligations and could not be considered as a pecuniary loss. Concerning the applicant's claims related to the medical expenses, the Government argued that there was no causal link between this claim and the alleged violation of the applicants' rights.

29. The Court considers that the applicants have not submitted any documentary evidence proving the amount of the alleged expenses related to the construction work carried out on the land plot. As for the remainder of the claims, no causal link has been established between the alleged pecuniary loss and the violations found. Therefore, the Court dismisses the applicants' claim under this head.

2. *Non-pecuniary damage*

30. The applicants claimed EUR 10,000 in respect of non-pecuniary damage.

31. The Government considered this amount unjustified and submitted that the finding of a violation of the Convention would constitute sufficient reparation.

32. The Court considers that the applicants must have sustained some non-pecuniary damage as a result of the non-enforcement of the final judgment in the applicant company's 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 applicants jointly the sum of EUR 4,800 under this head, plus any tax that may be chargeable on this amount.

33. Moreover, the Court considers that, in so far as the judgment of 12 October 2005 remains in force, the State's outstanding obligation to enforce it cannot be disputed. Accordingly, the applicant company 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 applicants as far as possible are put in the position they 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 in the present case this principle applies as well. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the judgment of 12 October 2005.

B. Costs and expenses

34. The applicants also claimed AZN 2,250 for legal and translation services (AZN 1,750 for legal fees and AZN 500 for translation expenses) and AZN 300 for postal expenses. In support of their claims, they submitted a contract for legal services rendered in the proceedings before the Court and a contract for translation services. Both contracts stipulated that the amounts due were to be paid in the event that the Court found a violation of the applicants' rights.

35. The Government considered that the claim was excessive in the part concerning the legal and translation fees, taking into account the nature and the volume of the case. As for the postal expenses, the Government noted that this part of the claim was unsupported by any evidence. The Government indicated their willingness to accept the part of the applicants' claim in an amount of up to AZN 650.

36. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 1,500 covering costs under all heads, plus any tax that may be chargeable to the applicants on this amount.

C. Default interest

37. 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 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 the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the domestic courts' judgment of 12 October 2005;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicants, 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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 25 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President