



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

FIRST SECTION

CASE OF ISMAYILOVA v. AZERBAIJAN

(Application no. 18696/08)

JUDGMENT

STRASBOURG

9 December 2010

FINAL

09/03/2011

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

In the case of Ismayilova v. Azerbaijan,

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

Christos Rozakis, *President*,

Nina Vajić,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 18696/08) 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 an Azerbaijani national, Ms Yagut Rashid qizi Ismayilova (*Yaqut Rəşid qızı İsmayilova* - “the applicant”), on 4 March 2008.

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

3. The applicant alleged that the failure to enforce the judgment of 9 June 1999 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 4 September 2009 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 1953 and lives in Baku.

6. On 22 January 1998 the applicant was issued an occupancy voucher (*yaşayış orderi*) to an apartment in a recently constructed residential building in Baku on the basis of the Baku City Executive Authority's order of 19 January 1998.

7. At the same time, the applicant became aware that the apartment was occupied by M. and his family, who were internally displaced persons (“IDP”) from Lachin, a region under occupation of Armenian military forces following the Armenian-Azerbaijan conflict over Nagorno-Karabakh.

8. According to the applicant, despite her numerous demands, M. refused to vacate the apartment noting that he was an IDP and he had no other place to reside in.

9. On an unspecified date in 1999, the applicant lodged a lawsuit with the Yasamal District Court asking the court to order the eviction of M. and his family from the apartment.

10. On 9 June 1999 the Yasamal District Court granted the applicant's request. The court held that the applicant was the sole lawful tenant of the apartment on the basis of the occupancy voucher of 22 January 1998 and, therefore, the apartment was unlawfully occupied by M. and his family. No appeals were filed against this judgment and, pursuant to the domestic law in force at the material time, it became enforceable within ten days after its delivery.

11. According to the applicant, M. and his family refused to comply with the judgment and the competent authorities did not take any measures to enforce it.

12. It appears from the case file that in 2008 the applicant lodged compensation proceedings against the State Committee for Refugees and Internally Displaced Persons claiming EUR 72,000 for unlawful use of her flat by an IDP family. On 7 May 2008 the Yasamal District Court dismissed the applicant's claim as unsubstantiated. On 7 July 2008 the Court of Appeal and on 10 November 2008 the Supreme Court upheld the Yasamal District Court's judgment of 7 July 2008.

13. At the time of the latest communication with the applicant, the judgment of 9 June 1999 in the applicant's favour remained unenforced.

RELEVANT DOMESTIC LAW

14. The relevant domestic law is summarised in *Gulmammadova v. Azerbaijan* (no. 38798/07, §§ 18-24, 22 April 2010).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

15. 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 Yasamal District Court's judgment of 9 June 1999 in her favour. Article 6 § 1 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 13 of the Convention reads 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 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

1. *The Court's competence rationae temporis*

16. The Court observes that the domestic judgment in the applicant's favour was delivered prior to 15 April 2002, the date of the Convention's entry into force in respect of Azerbaijan.

17. The Court notes that, owing to the authorities' continued failure to execute the judgment in question, it remains still unenforced. There is a continuous situation and the Court is therefore competent to examine the part of the application relating to the period after 15 April 2002 (see *Gulmammadova*, cited above, § 26).

2. Domestic remedies

18. The Government argued that the applicant had failed to exhaust domestic remedies. In particular, the Government alleged that the applicant could have challenged the domestic authorities' failure to enforce the judgment of 9 June 1999 before the domestic courts.

19. The applicant disagreed with the Government and maintained that the remedies suggested by the Government were not appropriate in the circumstances of the present case.

20. The Court notes that a similar objection was raised by the Government in the *Gulmammadova* case and was dismissed by the Court (see *Gulmammadova*, cited above, § 30). The Court refers to its reasoning in that case and sees no ground to depart from it. Therefore this part of the Government's objection should be dismissed.

3. Conclusion

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

B. Merits

22. The Government submitted that, due to the large number of IDPs in Azerbaijan as a result of the Armenian-Azerbaijani conflict over Nagorno-Karabakh, there was a serious problem with housing for IDPs in Azerbaijan. The Government noted that the judgment in the applicant's favour could not be enforced because there was no other accommodation available for the IDPs settled in the flat in question.

23. The applicant reiterated her complaint.

24. The Court notes that the judgment in the applicant's favour has so far remained unenforced for more than eleven years.

25. The Court points out that the factual circumstances of this case are similar and the complaint and legal issues raised are identical to those in the *Gulmammadova* case (cited above). The Court reiterates that it has found violations of Article 6 § 1 and Article 1 of Protocol No. 1 in that case.

26. Having examined all the material in its possession, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

27. In particular, the Court is prepared to accept that, in this case, the existence of a large number of IDPs in Azerbaijan created certain difficulties in the execution of the judgment in the applicant's favour. Nevertheless, the judgment remained in force, but no adequate measures were taken by the authorities to comply with it. It has not been shown that the authorities had continuously and diligently taken measures for the

enforcement of the judgment in question. In such circumstances the Court considers that no reasonable justification was advanced by the Government for the significant delay in the enforcement of the judgment.

28. Concerning the applicant's submissions about the alleged violation of her property rights, it has not been established either in the domestic proceedings or before the Court that any specific measures have been taken by the domestic authorities in order to comply with their duty of balancing the applicant's right to peaceful enjoyment of her possessions protected under Article 1 of Protocol No. 1 to the Convention against IDPs' right to be provided with accommodation. In such circumstances, the failure to ensure the execution of the judgment for several years resulted in a situation where the applicant was forced to bear an excessive individual burden. The Court considers that, in the absence of any compensation for having this excessive individual burden to be borne by the applicant, the authorities failed to strike the requisite fair balance between the general interest of the community in providing the IDPs with temporary housing and the protection of the applicant's right to peaceful enjoyment of her possessions (see *Gulmammadova*, cited above, §§ 43-50).

29. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

30. The Court does not consider it necessary to rule on the complaint under Article 13 of the Convention because Article 6 is *lex specialis* in regard to this part of the application (see, for example, *Efendiyeva v. Azerbaijan*, no. 31556/03, § 59, 25 October 2007).

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 76,893.00 euros (EUR) in respect of pecuniary damage, including EUR 14,916 for loss of rent, EUR 78,000 for the alleged current market value of the flat, and EUR 4,595 for personal loans that the applicant allegedly had to take owing to the non-enforcement of the judgment. The applicant calculated the amount of the lost rent based on the information on the monthly market rent of flats situated in that area

of the city. This information was obtained from an association specialising in these matters.

33. The Government argued, referring to the estimates of a different company specialising in these matters, that the amount of lost rent for the period from April 2002 to February 2009 would be 7,450 US dollars (USD). The Government further argued that as the building in question had been half-constructed the applicant would have incurred certain maintenance expenses in connection with her flat which, according to a local company, would amount to USD 7,359.

34. As for the part of the claim relating to the market value of the flat and the personal loans, the Court rejects this part as it does not find any causal link between the violation found and this part of the claim.

35. As for the part of the claim relating to the loss of rent, the Court finds that there is a causal link between this part of the claims and the violations found and that the applicant must have suffered pecuniary damage as a result of her lack of control over her flat. Having examined the parties' submissions, the Court awards the applicant EUR 7,000 on account of the loss of rent.

2. Non-pecuniary damage

36. The applicant claimed USD 25,000 in respect of non-pecuniary damage.

37. The Government argued that, the eventual enforcement of the judgment would constitute sufficient redress for the alleged violation of Article 6 of the Convention.

38. 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.

39. Moreover, the Court considers that, in so far as the judgment of 9 June 1999 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 in the present case this principle applies as well. It therefore considers that the Government must secure the enforcement of the judgment of 9 June 1999.

B. Costs and expenses

40. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court. This claim was not itemised or supported by any documents.

41. The Government did not comment on this.

42. 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 are reasonable as to quantum. In the present cases, having regard to the fact that the applicant failed to produce any supporting documents, the Court dismisses the claim for costs and expenses.

C. Default interest

43. 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 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 according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the domestic court's judgment of 9 June 1999;
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 7,000 (seven 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 9 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President