



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

FIRST SECTION

CASE OF AKHUNDOV v. AZERBAIJAN

(Application no. 39941/07)

JUDGMENT

STRASBOURG

3 February 2011

FINAL

03/05/2011

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

In the case of Akhundov v. Azerbaijan,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 39941/07) 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, Mr Marif Khalil oglu Akhundov (*Marif Xəlil oğlu Axundov* - “the applicant”), on 12 September 2007.

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

3. The applicant alleged that failure to enforce the judgment of 23 February 1998 had violated his rights to a fair trial and to an effective remedy, as guaranteed by Articles 6 and 13 of the Convention, and his right to peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

4. On 26 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 1951 and lives in Baku.

6. The applicant worked as an inspector at the Baku Audit Department (*Bakı şəhəri üzrə Nəzarət-Təftiş İdarəsi* - “the Department”) of the Ministry of Finance (“the Ministry”). On 1 May 1997 the applicant was dismissed

from his job by an order of the Ministry for unsatisfactory work performance.

7. The applicant lodged an action against the Ministry, claiming unlawful dismissal. By a judgment of 23 February 1998 the Sabayil District Court allowed the applicant's claim, ordering his reinstatement in his previous job. Moreover, the court ordered the Ministry to pay the applicant his unpaid salary in an unspecified amount for the period from 1 May 1997 (date of dismissal) to 23 February 1998 (date of delivery of the judgment). No appeals were lodged against the judgment of 23 February 1998 within the time-limits specified by law and, pursuant to the domestic law in force at the material time, it entered into legal force ten days after its delivery.

8. Despite the applicant's numerous demands and the fact that the writ of execution had been sent several times to the Ministry for execution, the competent authorities did not take any measures to enforce the judgment.

9. By a letter of 18 January 2000 the Ministry informed the applicant that, upon the reorganisation of the Ministry, the Department had been abolished by an internal order of 28 January 1999 of the Ministry and that therefore it was not possible to reinstate him in his previous job.

10. On 14 November 2002 the applicant lodged an action against the Ministry, seeking compensation for non-execution of the judgment of 23 February 1998. On 17 January 2003 the Nasimi District Court delivered a judgment in the applicant's favour. The court noted that the judgment of 23 February 1998 was still in force and awarded the applicant 4,704,000 Old Azerbaijani manats (AZM, approximately 920 euros (EUR)) as his unpaid salary calculated from 23 February 1998 to 17 January 2003 (date of delivery of this judgment). This amount was calculated on the basis of the applicant's previous average salary.

11. On 17 February 2003 the applicant appealed against the judgment of 17 January 2003, claiming a higher amount of compensation. In the meantime, it appears from the case file that the Ministry requested the Court of Appeal to suspend the proceedings due to the Ministry's cassation appeal lodged with the Supreme Court against the judgment of 23 February 1998. After the Ministry's above-mentioned request, the proceedings before the Court of Appeal were formally suspended.

12. By a judgment of 10 May 2006 the Court of Appeal upheld the first-instance court's judgment, noting that the amount of compensation had been calculated correctly. On 15 March 2007 the Supreme Court upheld the Court of Appeal's judgment.

13. On 28 January 2009 the judgment of 17 January 2003 was executed and the applicant received the amount awarded by the judgment (approximately EUR 920).

14. On 8 April 2009 the Ministry executed the judgment of 23 February 1998: the applicant was reinstated in his previous post and an amount of AZN 9,155.12 (approximately EUR 9,063) was paid to him as

compensation for lost earnings, in addition to compensation awarded by the judgment of 17 January 2003.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION ON ACCOUNT OF LENGTHY NON-ENFORCEMENT

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 judgment of 23 February 1998. 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 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 provides 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. ...”

A. Admissibility

1. Abuse of the right of application

16. On 8 April 2009 the applicant informed the Court that the judgment in his favour had been enforced by the relevant authorities and that he wished to withdraw his application. However, by a letter of 15 April 2009 the applicant submitted that he wished to pursue examination of his case before the Court and that he had signed the letter of 8 April 2009 under pressure from Ministry officials and in the absence of his lawyer.

17. The Government submitted that the applicant had abused his right of application. They noted that although by his letter of 8 April 2009 the applicant had withdrawn his application, he had subsequently submitted that he wished to pursue the examination of his case by the Court. Such attitude

amounted, according to the Government, to an abuse of the right of application within the meaning of Article 35 § 3 of the Convention which, in so far as relevant, reads as follows:

“The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of application”.

18. The Court reiterates that, except in extraordinary cases, an application may only be rejected as abusive if it is knowingly based on untrue facts (see *Akdivar and Others v. Turkey*, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 53-54; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X).

19. The Court finds that the applicant's attitude cannot be considered as amounting to an abuse of the right of petition and therefore rejects the Government's objection.

20. Taking into account the applicant's letter of 15 April 2009, the Court notes that it has not been established that the applicant genuinely wished to withdraw his application.

2. *The Court's competence rationae temporis*

21. The Court reiterates that it is only competent to examine complaints of violations of the Convention arising from events that have occurred after the Convention has entered into force with respect to the High Contracting Party concerned (see, for example, *Kazimova v. Azerbaijan* (dec.), no. 40368/02, 6 March 2003). The Court notes that the Convention entered into force with respect to Azerbaijan on 15 April 2002.

22. Accordingly, the Court's competence is limited to the part of the application relating to the events that occurred after 15 April 2002, whereas the remainder of the application falls outside of its competence *rationae 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.

3. *The applicant's victim status*

23. Following the applicant's reinstatement in his previous post on 8 April 2009 and payment of the compensation for lost earnings, the Government argued that the applicant could no longer be considered a “victim”, as the violations of his Convention rights had been remedied at the domestic level.

24. The applicant did not comment on this issue. However, he complained that his lost earnings had not been calculated properly.

25. The Court reiterates 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 of Judgments and Decisions* 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.

26. The Court notes that the enforcement of the judgment in the applicant's favour and payment of the judgment award and compensation for lost earnings may arguably have constituted an acknowledgment by the authorities of the alleged violations of the Convention. In this regard the Court notes the applicant's allegation concerning allegedly wrong calculation of pecuniary awards made by the domestic judgments. This can be understood as an argument alleging that the violations of the Convention have not been acknowledged because the judgment in the applicant's favour had not been fully enforced. The Court observes that on 8 April 2009 the applicant was reinstated in his former post in the Ministry of Finance and a sum of money was paid to him as compensation for lost earnings. The Court further notes that the applicant's complaint about alleged errors in calculation of the amount of compensation are new complaints which are not within the scope of the present case, which concerns non-enforcement of a final judgment in the applicant's favour. The Court further observes that the applicant has not challenged before any domestic authorities the basis of calculation of the amounts paid to him. In such circumstances the Court considers that the domestic judgment has been fully enforced.

27. However, having regard to the fact that the judgment remained unexecuted for more than eleven years, of which more than seven years fall within the period after the Convention's entry into force in respect of Azerbaijan, the Court finds that the compensation awarded to the applicant was meant to cover only the domestic pecuniary award in respect of the lost earnings and no compensation was offered in respect of the alleged violation of the Convention, that is the lengthy non-enforcement of the judgment of 23 February 1998.

28. In such circumstances, while it is true that the applicant has been reinstated in his previous job in accordance with the judgment of 23 February 1998, as well as paid the domestic award in respect of pecuniary damage, the Court finds that the measures taken in the applicant's favour were nevertheless insufficient to deprive him of “victim” status in the present case (compare with *Ramazanov and Others v. Azerbaijan*, no. 44363/02, § 38, 1 February 2007).

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

4. Conclusion

30. Having regard to its findings above, the Court further notes that the complaints are not inadmissible on any other grounds and that they are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. They must therefore be declared admissible in the part relating to the period after 15 April 2002.

B. Merits

1. Articles 6 § 1 and 13 of the Convention

31. The Government submitted that although the relevant authorities had taken all necessary actions, the enforcement of the judgment of 23 February 1998 had been impossible because of the abolition of the department where the applicant had worked before his dismissal. The Government alleged that the Ministry had regularly offered the applicant different posts but the applicant had refused them, requesting higher-level posts. Furthermore, the Government submitted that the judgment of 17 January 2003 delivered in connection with the applicant's compensation claim for non-enforcement of the judgment of 23 February 1998 had been executed on 28 January 2009.

32. The applicant maintained his complaints.

33. 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 without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to court and the conduct of proceedings could 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*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

34. 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). In the instant case, the applicant should not have been prevented from benefiting from the success of the litigation, which concerned the reinstatement of the applicant in his job after wrongful dismissal as well as the payment of compensation for pecuniary damage.

35. The Court notes that, from the date of the Convention's entry into force with respect to Azerbaijan on 15 April 2002 to the date of enforcement of the judgment on 8 April 2009, the Sabayil District Court's judgment of 23 February 1998 remained unenforced for almost seven years. Before 15 April 2002, the judgment had not been enforced for approximately four years. No reasonable justification was advanced by the Government for this delay.

36. By failing for all those years to take the necessary measures to comply with the final judgment in the present 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.

37. 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, *Jasiūnienė v. Lithuania*, no. 41510/98, § 32, 6 March 2003).

2. Article 1 of Protocol No. 1 to the Convention

38. The Sabayil District Court's judgment of 23 February 1998 ordered payment of the applicant's unpaid salary from the date of his dismissal to the date of delivery of the judgment (23 February 1998). Although the judgment had become final and the enforcement proceedings had been instituted, the judgment remained unenforced for almost seven years after the Convention's entry into force with respect to Azerbaijan. The inability of the applicant to obtain execution of this judgment constituted an interference with his right to peaceful enjoyment of his possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

39. By failing to comply with the judgment of 23 February 1998 in a timely manner, the national authorities prevented the applicant from being paid the money he could reasonably have expected to receive. The Government have not advanced any plausible justification for this interference (see *Burdov*, cited above, § 41).

40. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION ON ACCOUNT OF THE COMPENSATION PROCEEDINGS

41. Relying on Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained that the compensation proceedings had exceeded a “reasonable” time and that the compensation awarded by the judgment of 17 January 2003 had been insufficient.

42. As to the complaint about the alleged excessive length of compensation proceedings, having regard to its findings under Article 6 § 1 of the Convention in respect of lengthy non-enforcement of the final judgment in the applicant's favour, the Court does not consider it necessary to examine this complaint.

43. In so far as the applicant complains about the insufficiency of the amount of compensation awarded by the domestic courts, having carefully examined the applicant's submissions in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

44. It follows that this part of the application is inadmissible under Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed a total amount of EUR 35,409 in respect of pecuniary damage. This amount included the alleged lost earnings and the amount the applicant had allegedly had to borrow from his family and friends during his unemployment, due to non-enforcement of the judgment.

47. The Government submitted that the applicant's claims were unsubstantiated and that the applicant had failed to submit any evidence supporting his allegations.

48. The Court considers that the applicant did not submit any proof supporting his claims for pecuniary damage. It therefore rejects this claim.

2. Non-pecuniary damage

49. The applicant claimed EUR 15,000 in respect of non-pecuniary damage.

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

51. 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 his 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.

B. Costs and expenses

52. The applicant also claimed EUR 1,600 for the costs and expenses (EUR 1500 for legal and EUR 100 for postal services) incurred before the domestic courts and before the Court.

53. The Government considered that the claim was excessive and that the amounts had not actually been incurred.

54. 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

55. 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 part of the application concerning non-enforcement of the judgment in the applicant's favour admissible and the remainder of the application inadmissible;
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*
 - (a) that the respondent State is to pay the applicant, within three months of 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, plus any tax that may be chargeable to the applicant, to be converted into New Azerbaijani manats (AZN) at the rate applicable on 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Section Registrar

Christos Rozakis
President