



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

FIRST SECTION

CASE OF ZULFALI HUSEYNOV v. AZERBAIJAN

(Application no. 56547/10)

JUDGMENT

STRASBOURG

26 June 2012

FINAL

26/09/2012

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

In the case of Zulfali Huseynov 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,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 May and 5 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 56547/10) 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 Zulfali Huseynov (“the applicant”), on 20 September 2010.

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

3. On 7 April 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1954 and lives in Baku.

5. On 22 January 1998 the applicant was issued with an occupancy voucher (*yaşayış orderi*) for a flat in a recently constructed residential building in Baku on the basis of the Baku City Executive Authority’s order of 19 January 1998.

6. At the same time, the applicant became aware that the flat was occupied by J. and his family, who were internally displaced persons

(“IDP”) from Aghdam, a region under occupation of Armenian military forces following the Armenian-Azerbaijan conflict over Nagorno-Karabakh.

7. On an unspecified date in 1998, the applicant lodged a lawsuit with the Yasamal District Court asking the court to order the eviction of J. and his family from the flat.

8. On 7 July 1998 the Yasamal District Court granted the applicant’s request. The court held that the applicant was the sole lawful tenant of the flat on the basis of the occupancy voucher of 22 January 1998 and, therefore, the flat was unlawfully occupied by J. 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.

9. According to the applicant, J. and his family refused to comply with the judgment and the competent authorities did not take any measures to enforce it for many years.

10. According to the Government’s letter of 17 May 2012, the judgment in the applicant’s favour was enforced in April 2012.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is summarised in the Court’s judgment in the case of *Gulmammadova v. Azerbaijan* (no. 38798/07, §§ 18-24, 22 April 2010).

THE LAW

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

12. Relying on Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained about the delay in enforcement of the judgment in his favour. 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 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

13. 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.

14. The Court notes that in the light of the authorities’ continued failure to execute the judgment in question, it remained unenforced for approximately ten years after the Convention’s entry into force. Therefore, there existed a continuous situation and the Court is thus competent to examine the part of the application relating to the period after 15 April 2002 (see *Gulmammadova*, cited above, § 26).

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

B. Merits

16. The Court points out that the factual circumstances of the present case are similar – and the complaints and legal issues raised are identical – to those in the *Gulmammadova* case (cited above), in which it found violations of Article 6 § 1 and Article 1 of Protocol No. 1.

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

18. In particular, the Court is prepared to accept that, in the present case, the existence of a large number of IDPs in Azerbaijan created certain difficulties in relation to the execution of the judgment in the applicant’s favour. Nevertheless, the judgment remained final and enforceable, but for a total period of more than thirteen years, of which approximately ten years fell after the Convention’s entry into force, no adequate measures were taken by the authorities to ensure compliance with it. It has not been shown that the authorities acted with expedition and diligence in taking any measures necessary for the enforcement of the judgment in question. In such circumstances, the Court considers that no reasonable justification has been advanced by the Government for the significant delay in the enforcement of the judgment.

19. As regards the applicant's submissions concerning the alleged violation of his property rights, it has not been established either in the domestic proceedings or before the Court that any specific measures were taken by the domestic authorities in order to comply with their duty to balance the applicant's right to peaceful enjoyment of his possessions protected under Article 1 of Protocol No. 1 to the Convention against the IDPs' right to be provided with accommodation. In such circumstances, the failure to ensure the execution of the judgment for a considerable period of time resulted in a situation in which the applicant was forced to bear an excessive individual burden. The Court considers that, in the absence of any compensation for this excessive individual burden, 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 his possessions (see *Gulmammadova*, cited above, §§ 43-50).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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*

22. The applicant claimed an amount of 26,223 euros (EUR) in respect of pecuniary damage. The amount claimed covered the loss of rent from the date of the Convention's entry into force in respect of Azerbaijan (15 April 2002), as indexed according to the National Bank's interest rates. In support of his claims the applicant submitted some estimates by a non-governmental association with respect to rent paid for flats in a similar condition.

23. The Government indicated their willingness to accept the applicant's claims for pecuniary damage up to 15,649 USD dollars (USD) (which, according to the Government, was equivalent to approximately EUR 11,381 at the time of the Government's submissions). This amount was calculated on the basis of the total amount of the lost rent from the date of the Convention's entry into force in respect of Azerbaijan, as indexed according to the National Bank's interest rates, amounting to approximately

USD 26,754. The Government noted, however, that the interior of the flat located in a recently constructed building required minimum fittings and decoration work, which usually fell to be done by the owner and without which the flat would not be suitable for use. Therefore, the Government claimed that the total amount of lost rent should be reduced by an estimated sum of USD 7,359 for the expenses that the applicant would inevitably have incurred for the necessary work, and that a further sum of USD 3,746 (at the annual rate of 14%) should be deducted for the taxes that the applicant should have paid on rental revenue. In support of their calculations, the Government submitted an estimate provided by a commercial consulting company on rental rates for flats in a similar condition as well as an estimate of the expenses for the necessary work from the same company.

24. The Court considers that the applicant must have suffered pecuniary damage as a result of his lack of control over his flat and finds that there is a causal link between the violation found and the pecuniary damage claimed in respect of lost rent (compare *Radanović v. Croatia*, no. 9056/02, §§ 62-66, 21 December 2006, and *Gulmammadova*, cited above, § 55).

25. The Court reiterates that, in cases like the present one, the pecuniary damage suffered by applicants should be calculated starting from the date of entry into force of the final judgment delivered in their favour. However, when that date falls prior to the date of the Convention's entry into force in respect of Azerbaijan, the damage should be calculated from the date of the Convention's entry into force (see *Soltanov and Others v. Azerbaijan*, nos. 41177/08, 41224/08, 41226/08, 41245/08, 41393/08, 41408/08, 41424/08, 41688/08, 41690/08 and 43635/08, § 24, 13 January 2011). In the present case, the damage should be calculated for a period starting from 15 April 2002, the date of the Convention's entry into force in respect of Azerbaijan, and ending in April 2012 (see paragraph 10 above).

26. Having examined the parties' submissions, the Court will take as a reference point the estimates of rental rates submitted by the Government, as they had been prepared by a commercial consulting firm specialised in such matters. The Court also agrees with the parties that these rates should be adjusted for inflation and other financial factors, and that the National Bank's default interest rates can be used for such adjustment. This adjusted amount (total estimated amount of maximum possible rent from 15 April 2002 to April 2012, plus interest) should serve as a starting point for calculating the final amount of the award.

27. Furthermore, the Court takes note of the Government's argument that the applicant would have incurred certain expenses for various initial works to be carried out in the flat. The Court accepts this argument; however, it cannot accept the specific amount proposed by the Government as the estimate for such expenses in the present case, as this estimate was not supported by any explanations as to which specific work was required or the breakdown of costs. In any event, the Court also notes that, in

addition to the initial work, there would have been other inevitable expenses relating to the flat's maintenance over the years. Moreover, it would not be unreasonable to suppose that the applicant could have experienced certain delays in finding suitable tenants, further reducing the actual amount of revenue he could expect to receive from renting out the flat during the relevant period (*Radanović*, cited above, § 65). Having regard to the above considerations and to the information available in respect of similar matters in other cases, the Court, deciding on an equitable basis, considers that it is reasonable to reduce the total adjusted amount of lost rent (referred to in paragraph 26 above) by a lump sum of 30%, in order to account for losses incurred owing to the work, maintenance and possible delays in finding suitable tenants.

28. Lastly, the Court notes that the applicant would also have been subject to taxation (see *Radanović*, cited above, § 65, and *Soltanov and Others*, cited above, § 26). Accordingly, the amount to be awarded to the applicant should be further adjusted by deducting the amount of tax that should have been paid, calculated at the annual rate of 14%.

29. Having regard to the foregoing, the Court awards the applicant an amount of EUR 13,200, net of additional taxes, in respect of pecuniary damage.

2. Non-pecuniary damage

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

31. The Government indicated their willingness to accept the applicant's claim for non-pecuniary damage up to a maximum of EUR 3,000.

32. 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 EUR 3,600 to the applicant under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

33. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the domestic courts and the Court.

34. The Government submitted that the applicant had failed to produce any documents supporting his claims under this head.

35. 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.

36. Having regard to the fact that the applicant failed to produce any supporting documents, the Court dismisses his claims for costs and expenses.

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*
 - (a) that the respondent State is to pay the applicant, within the above-mentioned three months, EUR 13,200 (thirteen thousand two hundred euros) in respect of pecuniary damage and EUR 3,600 (three thousand six 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;
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 26 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President