



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

FIFTH SECTION

CASE OF AKHVERDIYEV v. AZERBAIJAN

(Application no. 76254/11)

JUDGMENT
(Just satisfaction)

STRASBOURG

21 March 2019

FINAL

21/06/2019

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

In the case of Akhverdiyev v. Azerbaijan,

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

Angelika Nußberger, *President*,

Yonko Grozev,

André Potocki,

Mārtiņš Mits,

Gabriele Kucsko-Stadlmayer,

Lətif Hüseynov,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 26 February 2019,

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

PROCEDURE

1. The case originated in an application (no. 76254/11) 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 Adalat Ali oglu Akhverdiyev (*Ədalət Əli oğlu Axverdiyev* – “the applicant”), on 1 December 2011.

2. In a judgment delivered on 29 January 2015 (“the principal judgment”), the Court held that the applicant had been deprived of his possessions, consisting of a house and a plot of land belonging to the house, in breach of the requirement of lawfulness and that, consequently, there had been a violation of Article 1 of Protocol No. 1 (*Akhverdiyev v. Azerbaijan*, no. 76254/11, §§ 99-100 of the judgment and point 2 of the operative provisions, 29 January 2015).

3. Under Article 41 of the Convention the applicant claimed a sum corresponding to the value of his house and the plot of land in issue, adjusted for inflation, and a sum for the medical expenses he had incurred because of an alleged aggravation of his state of health owing to the breach of his property rights. He also requested compensation for non-pecuniary damage. Finally, he requested reimbursement of the costs incurred in the proceedings before the national courts and before the European Court.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it in whole and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 112 and point 4 of the operative provisions). At the same time, by letter of 4 May 2015 the Court requested

the parties to submit, by the same deadline, the name of one mutually acceptable expert. If the parties failed to settle the matter within the deadline indicated and if necessary in view of the observations received, the Court would directly request the expert to prepare an independent evaluation of the pecuniary damage sustained. If the parties could not agree on such an expert, each party was requested, as an alternative, to provide a list of experts from which the Court might choose one expert for that task. The parties were informed that, should the Court request such an expert evaluation, its costs would ultimately be payable by the respondent Government pursuant to Article 38 of the Convention.

5. The parties did not reach an agreement on just satisfaction within the time-limit indicated. The applicant and the Government each filed observations, which were transmitted to the other party. Each party also submitted a list of experts, instead of agreeing to name one expert.

6. On 15 January 2018 the President of the Chamber to which the subsequent proceedings had been assigned (point 4 (c) of the operative provisions of the principal judgment) invited the parties to submit an update on relevant factual developments in the case, with a view to clarifying certain factual matters relevant to the question of the application of Article 41 of the Convention.

7. Each party submitted an update on factual developments, which was transmitted to the other party.

8. On 15 March 2018 the President of the Chamber decided to request an independent expert opinion as regards the question of just satisfaction from Mr Z. Husseynov of ABAK-Az Crowe Ltd, an expert chosen from the lists of experts submitted by the parties. The expert was asked to address a number of specific questions relevant to the determination of the pecuniary damage sustained.

9. On 13 June 2018 the expert submitted his report and a bill for his fees. Each party was given an opportunity to submit comments on the expert's submissions, of which they availed themselves. Each party's comments were transmitted to the other party.

THE LAW

10. 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. Pecuniary damage

1. *The parties' submissions*

(a) **The applicant**

11. The applicant originally claimed a total of 550,000 new Azerbaijani manats (AZN) (which, at the time of submission of the original claim was equivalent to approximately 538,000 euros (EUR)) in respect of pecuniary damage, comprising:

(a) AZN 541,500 as compensation for the house and the plot of land, comprising:

(i) AZN 170,000 for the house and a sum in the range of AZN 230,000 to AZN 255,000 for the plot of land, as assessed on 1 July 2013 by an NGO named Property Market Participants (*"Əmlak Bazarı İştirakçıları" İctimai Birliyi*) at the applicant's request; and

(ii) the remaining amount added to the above amounts as adjustment for inflation during the years 2010 to 2013; and

(b) AZN 8,500 for the medical expenses he had incurred in connection with treatment for a heart condition, which he claimed had been aggravated by the fact that for several years he had had to live in a block of flats, instead of a house with a courtyard.

12. In his observations following the adoption of the principal judgment, the applicant amended his claim, raising it to EUR 550,000. In support of this claim, he argued that, firstly, an additional 20 per cent should be added to the market value of both the house and the land (specified in paragraph 11 (a) (i) above), in accordance with Presidential Decree no. 689 of 26 December 2007, which provided for an increase of the purchase price of immovable property alienated for State needs by an amount corresponding to 20 per cent of the market value of the property as determined under the law. Secondly, the resulting amount should be further adjusted for inflation during the period following the date of adoption of the principal judgment. Thirdly, he argued that interest should be added to that amount at the rate applicable in Azerbaijan to foreign currency bank deposits. Lastly, he reiterated the part of the claim in respect of medical expenses.

13. As to the factual developments since the adoption of the principal judgment, the applicant submitted that he had neither received nor formally accepted possession of the two flats located on A.M. Cuma Street awarded to him as compensation by the domestic courts (see § 31 of the principal judgment). He had not been paid any monetary compensation either. After the demolition of his house, he and his family had resided in a flat belonging to his mother.

(b) The Government

14. The Government contested the applicant's claims in respect of the value of the house and the plot of land, arguing that they were exaggerated and that the assessment by NGO Property Market Participants could not be considered an adequate expert opinion, because it merely provided estimated amounts and lacked an explanation of the methodology used, details of calculations and any norms relied on.

15. The Government argued that the value of the house and the plot of land was much lower, specifically AZN 43,146 for the house and either AZN 55,000 or AZN 41,500 for the plot of land, depending on whether it was in private ownership or in lawful possession under the right of use. The above-mentioned valuation of the house had been given by Ekspert LTD in its report of 25 May 2010, presented by the Narimanov District Executive Authority ("the NDEA") in the domestic proceedings (see § 27 of the principal judgment). The above-mentioned valuation of the plot of land had been given by Mizan Consulting, an expert company, in its report of 12 September 2013 prepared at the Government Agent's request.

16. The Government further submitted that, in any event, the applicant could not claim any damages in respect of the plot of land, because it was State-owned and he had no title to it.

17. The Government further argued that the alleged damage incurred in connection with medical treatment had no causal link to the alleged violations.

18. As to the factual developments since the adoption of the principal judgment, the Government submitted that the applicant had visited the two flats located at A.M. Cuma Street, but had not resided in either of them. According to the Government, the applicant held tenancy rights to the flats pursuant to the occupancy vouchers (*yaşayış orderi*) awarded to him, but he had never applied for a certificate of ownership in respect of those flats. He resided in a flat located elsewhere.

2. Summary of the expert report of 13 June 2018

19. The expert, Mr Z. Husseynov, was provided with copies of all the relevant documents available in the case file relating to the property in question, including all the previous expert opinions relied on by the parties.

20. Mr Husseynov provided the following valuation of the property:

(a) as of 8 December 2009, the date on which the property was demolished (see §§ 16 and 84 of the principal judgment), its total market value was AZN 114,915 (comprising AZN 63,515 for the house and AZN 51,400 for the plot of land) ("the 2009 value");

(b) as of April 2018, when the report was prepared, the total market value of the property was AZN 187,930 (comprising AZN 103,871 for the house and AZN 84,059 for the plot of land) ("the 2018 value"). The 2009

value was converted to the 2018 value “taking into account the effects of inflation and currency depreciation, as well as the prevailing investment pattern of Azerbaijani residents” and was based on consumer-price-index data published by the Azerbaijan State Statistics Committee.

21. The expert also provided, separately, information on average simple statutory interest rates for the period between 2009 and 2018 based on data of the Central Bank and the Ministry of Finance.

22. Lastly, the expert provided an assessment of the market values and rental prices of the two flats for which the domestic courts had awarded the applicant occupancy vouchers (see §§ 31, 34 and 98 of the principal judgment).

3. The parties’ comments on the expert report of 13 June 2018

23. The applicant disagreed with the assessments and methodology used by the expert. He also noted that the expert had omitted to add interest to the amount representing the market value of the property.

24. The Government abstained from commenting on the report, noting that the expert had been selected by the Court.

4. The Court’s assessment

(a) General principles

25. The Court reiterates that a judgment in which it finds a breach of the Convention or its Protocols imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. If national law does not allow reparation or allows only partial reparation, Article 41 of the Convention empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see, among other authorities, *Hunguest Zrt v. Hungary* (just satisfaction), no. 66209/10, § 15, 16 January 2018, and *Bittó and Others v. Slovakia* (just satisfaction), no. 30255/09, § 20, 7 July 2015).

(b) Choice of expert opinion

26. The Court notes that before the delivery of the principal judgment, the parties submitted several expert opinions in support of their original submissions. The applicant submitted one expert opinion which had never been the subject of examination by the domestic courts. The Government submitted two expert opinions, one concerning the value of the house and the other concerning the value of the land. Only the former opinion had been examined by the domestic courts; it had been submitted as part of the defendant’s (NDEA’s) submissions before the domestic courts. However, the domestic courts made no monetary award on the basis of that report and, as it appears, relied on it only to the extent of determining that the value of

the newly constructed flat initially offered to the applicant exceeded the value of his house (see § 27 of the principal judgment). The applicant strongly objected to the validity of that expert report in the domestic proceedings (*ibid.*, § 32). The report had not been ordered by the domestic court: although the first-instance court had initially issued an order requesting an expert evaluation, that order was subsequently quashed and no court-ordered expert evaluation had taken place (*ibid.*, §§ 20 and 27).

27. The Court further notes that there is a significant disparity between the evaluations of the market value of the property in the expert opinions submitted by the parties (see paragraphs 11 and 15 above). Furthermore, both parties' assessments of the value of the land were made either with qualifications (the Government's) or as a range of amounts (the applicant's), rather than as one precise amount. Following the adjournment of the question of just satisfaction, the parties were not able to reconcile their positions.

28. Mr Z. Husseynov, the independent expert designated by the President of the Chamber, chosen from the lists of experts submitted by the parties, had the benefit of examining all the relevant documents in the case file, including the expert opinions submitted by the parties. In addition to assessing the value of the property as of the time the applicant had been deprived of it, the expert was also given the task of, *inter alia*, converting that valuation to one that reflected the present-day value.

29. The Court considers that the assessments given in the expert report of 13 June 2018 should be taken as the basis for determining the pecuniary damage in the present case.

(c) Assessment of the pecuniary damage

30. In the principal judgment, the Court found that both the house and the plot of land belonging to the house constituted the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention (see § 78 of the principal judgment). It also found that there had been a violation of that Convention provision because the applicant had been deprived of those possessions in breach of the requirement of lawfulness (*ibid.*, § 99). Accordingly, the Court rejects the Government's objection as to the part of the claim concerning the plot of land (see paragraph 16 above) and considers that the applicant should be awarded compensation for the entirety of his "possessions", namely the house and the plot of land.

31. The Court further notes that, in his updated just-satisfaction claims submitted after the adoption of the principal judgment, the applicant also claimed, for the first time, that the amount of compensation for the house and the plot of land should be increased by 20 per cent pursuant to Presidential Decree no. 689 of 26 December 2007. However, he had not raised the issue of the applicability of Presidential Decree no. 689 in his

compensation claim made before the domestic courts. Nor had he raised or otherwise argued that issue in his submissions on the merits made before the delivery of the Court's principal judgment or in his original claims for just satisfaction. Accordingly, neither the domestic courts nor the Court were given an opportunity to determine whether, in the present case, the applicant had a legitimate expectation under domestic law for the increase claimed, which is a question related to the admissibility and merits of the complaint under Article 1 of Protocol No. 1. For these reasons, this part of the claim should be dismissed.

32. Moreover, the applicant also claimed AZN 8,500 for medical expenses. The Court considers that no direct causal link can be established between the violation found and this part of the claim. It should therefore also be dismissed.

33. As to the compensation for the house and the plot of land, the Court considers that the assessment of the pecuniary damage in this case should be based on the principles adopted in its judgment in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, 22 December 2009). In particular:

(a) the date to be taken into consideration in assessing the pecuniary damage should be the date on which the deprivation of property occurred; accordingly, the market value of the property should be assessed as of that date;

(b) if any compensation was awarded at the domestic level, it should be deducted from the above-mentioned amount corresponding to the market value of the property;

(c) as the adequacy of compensation is likely to be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as the lapse of a considerable period of time, the amount obtained in point (b) above will have to be converted to its current value in order to offset the effects of inflation; and

(d) lastly, interest will have to be paid on the sum awarded so as to offset, at least in part, the long period for which the applicant has been deprived of the property; such interest can take the form of simple statutory interest applied to the progressively adjusted capital (*ibid.*, §§ 103 and 105).

34. As to point (a) in paragraph 33 above, according to the expert report of 13 June 2018, the total value of the property as of 8 December 2009 was AZN 114,915.

35. As to point (b) in paragraph 33 above, the Court notes that in the domestic proceedings, the applicant was not awarded any monetary compensation; instead, he was eventually awarded occupancy vouchers for two newly constructed flats (see §§ 27, 31 and 34 of the principal judgment). As can be established from the parties' submissions on the factual developments following the adoption of the principal judgment (see paragraphs 13 and 18 above), the applicant never took possession of those two flats as he deemed that compensation unlawful and unacceptable. He

had consistently disputed the adequacy of that compensation before the domestic courts and had refused to accept it (*ibid.*, § 32). The Court found in its principal judgment that, in the present case, an award in the form of occupancy vouchers was not in compliance with the domestic law on expropriation of private property (*ibid.*, § 98). For these reasons, the Court finds that no deductions should be made from the total amount corresponding to the value of the applicant's property.

36. As to point (c) in paragraph 33 above, the Court notes that the market value of the property was converted to the 2018 value by the expert and assessed at AZN 187,930 as of April 2018 (which, at that time, was equivalent to approximately EUR 90,000). The Court will further adjust this amount to the present-day value, on an equitable basis, in order to take into account the period of time that has lapsed prior to the adoption of the present judgment.

37. As to point (d) in paragraph 33 above, the Court considers that interest is to be applied in the present case, taking as the basis the applicable statutory interest rates of the Central Bank. The amount of interest to be added should be calculated on the original sum, not on the present-day value of the property, and then added to the present-day value of the property.

38. Having regard to the above considerations, the Court awards the applicant EUR 140,000 plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

39. The applicant originally claimed AZN 20,000 in respect of non-pecuniary damage. He increased this claim to EUR 30,000 in his submissions following the adoption of the principal judgment.

40. The Government submitted that the sum claimed was excessive.

41. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,000 under this head, plus any tax that may be chargeable on this amount.

C. Costs and expenses

42. The applicant claimed AZN 7,150 in respect of costs and expenses, namely AZN 7,000 for legal fees and AZN 150 for postal expenses. In support of the part of the claim in respect of the legal fees, he submitted a copy of the contract with his lawyer, dated 8 December 2009. In his submissions following the adoption of the principal judgment, the applicant increased his claims to EUR 9,000 for legal fees and EUR 150 for postal expenses, without submitting any further supporting documents.

43. The Government pointed out that, according to the contract between the applicant and his lawyer, the applicant had undertaken to pay the lawyer AZN 3,000 for legal fees incurred in the proceedings before the domestic

courts and AZN 2,000 for legal fees incurred in the proceedings before the Court, making a total of AZN 5,000. In any event, they considered that even the latter sum was excessive. As to the postal expenses, the Government argued that this part of the claim should be dismissed because the applicant had failed to present any supporting documentary evidence.

44. The Court reiterates that it will award costs and expenses only if satisfied that these were actually and necessarily incurred and reasonable as to quantum. Under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part.

45. The Court notes that the part of the claim in respect of postal expenses is not supported by documentary evidence and must therefore be rejected. As to the legal fees, regard being had to the documents in its possession and the above criteria, the Court awards the applicant EUR 3,000 in respect of the costs incurred before the domestic proceedings and the Court, plus any tax that may be chargeable to the applicant.

D. Costs of the expert report of 13 June 2018

46. The expert who prepared the report sought EUR 5,900, including value added tax, for his fees in connection with the production of the report.

47. The parties did not comment on this matter.

48. The Court reiterates that it is within its discretion to make an award for compensation and it is for the Court to determine whether such compensation is necessary and appropriate. In the present case, the expert's claim consists of costs relating to the preparation of an expert report which the Court considered indispensable in order to put an end to the violation found in the principal judgment and to allow the applicant a possibility of obtaining reparation for its consequences in accordance with Article 41 of the Convention (see *Belvedere Alberghiera S.r.l. v. Italy* (just satisfaction), no. 31524/96, § 50, 30 October 2003).

49. The parties have been informed that the costs and fees relating to the expert report, if eventually requested and obtained by the Court, would ultimately have to be borne by the respondent State pursuant to Article 38 of the Convention (see paragraph 4 above).

50. The Court considers that the expert's fees are reasonable and that the costs of production of the expert report of 13 June 2018 should be borne by the respondent State in full.

E. Default interest

51. The Court considers it appropriate that the default interest rate 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. *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, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:

(i) EUR 140,000 (one hundred and forty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that the respondent State is to pay the expert, Mr Z. Husseynov of ABAK-Az Crowe Ltd, within three months, EUR 5,900 (five thousand nine hundred euros) for the fees relating to the preparation of his expert report;

(c) 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;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President