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

FIFTH SECTION

CASE OF MAHARRAMOV v. AZERBAIJAN

(Application no. 5046/07)

JUDGMENT
(*Just satisfaction)*

STRASBOURG

9 May 2019

FINAL

09/08/2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Maharramov v. Azerbaijan,

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

Angelika Nußberger, *President,*
Yonko Grozev,
André Potocki,
Síofra O'Leary,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 2 April 2019,

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

PROCEDURE

1. The case originated in an application (no. 5046/07) 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 Ilgar Hilal oglu Maharramov (*İlqar Hilal oğlu Məhərrəmov* – "the applicant"), on 11 January 2007.

2. In a judgment delivered on 30 March 2017 ("the principal judgment"), the Court held that the applicant had been deprived of his possessions, consisting of a shop and the plot of land on which it was situated, in breach of the requirement of lawfulness and that, consequently, there had been a violation of Article 1 of Protocol No. 1 to the Convention (see *Maharramov v. Azerbaijan*, no. 5046/07, §§ 65-66 and point 2 of the operative provisions, 30 March 2017).

3. Under Article 41 of the Convention the applicant claimed, *inter alia*, compensation for the value of his shop, as well as compensation for non-pecuniary damage and reimbursement of his costs incurred in the proceedings before the Court.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it 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., § 72 and point 3 of the operative provisions).

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 for any comments

they might wish to make on them. Each of the parties also submitted their comments.

THE LAW

6. 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

7. The applicant originally claimed a total of 90,412 euros (EUR) in respect of pecuniary damage, including

(a) 588,000,000 old Azerbaijani manats (AZM) or 120,000 United States dollars (USD) for the market value of the shop as at the time of the interference, as assessed by Aysel-M, an expert valuation company, in its report of 13 December 2004 – according to the applicant, those amounts were equivalent to EUR 90,322 at the time of the interference; and

(b) EUR 90 for the services of the expert and an unspecified State fee paid at the domestic level.

8. In his observations following the adoption of the principal judgment, the applicant amended his claim, reducing it to EUR 50,000. In particular, he stated as follows: "In setting compensation, we ask the Court to proceed from our new proposals on the amount of compensation [EUR 50,000 in respect of pecuniary damage], which [have also been sent] to the Government". It appears that the entirety of this amount was claimed as compensation for the market value of the shop. He explained the reduction in the amount claimed as a gesture of goodwill.

9. In their comments on the applicant's original claim, the Government submitted that no compensation should be awarded for pecuniary damage, as the applicant's shop had been "neither demolished nor damaged". They further argued that, in any event, the applicant could not claim more than a maximum of USD 305 in respect of the shop, which represented the purchase price that the applicant had paid for the shop in 2003 (see the principal judgment, §§ 6 and 36), plus interest in the amount of USD 5.

10. In their observations submitted after the adoption of the principal judgment, the Government contested the applicant's claim by noting that the copy of the expert report by Aysel-M, submitted by the applicant to the Court, was not properly dated and that it was therefore not possible to establish whether it had been "written before or after the transfer of the shop".

11. The Government argued that the value of the applicant's property in question had been in the approximate range of 18,000 to 20,000 new Azerbaijani manats (AZN) in 2004. In support of this argument, they submitted a letter by a company named Property Relations and Legal Assistance LLC, dated 29 March 2018, addressed to the Deputy Head of the Ganja City Executive Authority ("the GCEA"). The letter stated briefly that, pursuant to a request made by the GCEA on the same day, 29 March 2018, the company had examined the relevant documents relating to the applicant's property and concluded that its "average market value" in 2004 was in the range of AZN 18,000 to 20,000 (which was equivalent to approximately EUR 13,700 to 15,200 in December 2004, at the time of the interference, and to approximately EUR 8,650 to 9,600 on 29 March 2018, the date of the letter).

2. The Court's assessment

12. 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).

13. As to the Government's argument that the applicant's shop had been "neither demolished nor damaged" (see paragraph 9 above), the Court found in the principal judgment that the removal of the shop had amounted to a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1 to the Convention (see the principal judgment, § 58). The applicant's possessions had comprised the shop and the plot of land on which it was located (ibid., § 55). The Court further found that there had been a violation of Article 1 of Protocol No. 1 because the interference with the applicant's possessions had been in breach of the requirement of lawfulness (ibid., § 65). Accordingly, the Court considers that the applicant is entitled to compensation for the deprivation of his property.

14. The assessment of the pecuniary damage in this case should be based on the principles adopted in the Court's judgment in *Guiso-Gallisay v. Italy* ((just satisfaction) [GC], no. 58858/00, 22 December 2009). In particular, the date to be taken into consideration in assessing the pecuniary damage (namely the market value of the property) should be the date on which the deprivation of property occurred, and if any compensation was awarded at the domestic level, it should be deducted from the amount corresponding to the market value of the property (ibid., §§ 103-05). Moreover, that amount may have to be converted to its current value in order to offset the effects of inflation, and interest may 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 (ibid., § 105).

15. In the present case, there was no court-ordered expert report in the domestic proceedings: although an expert opinion was ordered by the first-instance court, that order remained unexecuted (see the principal judgment, §§ 15-16).

16. Each of the parties submitted to the Court a different estimate of the market value of the applicant's property in 2004, the time when the applicant was deprived of the property. The Court will therefore determine which estimate should be taken as the basis for the assessment of the damage.

17. As to the estimate submitted by the Government in their observations following the principal judgment, the Court notes that they relied on a letter by a company named Property Relations and Legal Assistance LLC dated 29 March 2018, replying to the GCEA's assessment request made on the same day (see paragraph 11 above). There was no detailed expert valuation report attached to the letter. It merely provided a range of estimated values and lacked any explanation of the methodology used or any references to any previous expert opinions or to any other data relied on. The opinion stated in the letter was never the subject of examination by the domestic courts, as it was issued around twelve years after the conclusion of the relevant domestic proceedings.

18. As to the applicant's estimate, the Court notes that he consistently relied on an expert report issued by Aysel-M in December 2004, around the time of the interference with his property. The report provided an explanation of the methodology used and the basis for the assessment. Even though the Government argued that the report was not properly dated, the copy of the report available in the case file is dated "December 2004" and contains signatures of the expert and the director of Aysel-M as well as the company stamp. It is true that this copy does not show the exact date of the month on which it was issued; however, having regard to the material available to it, the Court is satisfied that this is a copy of the same report of 13 December 2004 which is mentioned elsewhere in the case materials. The applicant had submitted the same report for examination by the domestic

courts (see the principal judgment, §§ 12-13), even though the courts then rejected his compensation claim based on that report without providing any reasons (ibid., § 17) and in apparent breach of the domestic legal requirements (ibid., §§ 62-65).

19. The Court notes that the Government did not challenge the qualifications of the expert who prepared the report submitted by the applicant, nor did they submit their own expert report (compare *Żuk v. Poland* (just satisfaction), no. 48286/11, § 21, 30 May 2017, and *S.L. and J.L. v. Croatia* (just satisfaction), no. 13712/11, §§ 19-20, 6 October 2016). It should be stressed that when the Court adjourns the question of just satisfaction as it did in this case, it does so in order to provide the parties with an opportunity to reach a friendly settlement or present written observations; the latter to ensure that the application of Article 41 is ready for decision. For the reasons stated in paragraph 17 above, the letter by Property Relations and Legal Assistance LLC, submitted by the Government, cannot be considered to constitute an expert report. As the Government's submissions in the present case have not provided sufficient assistance in estimating the market value of the property, the Court has no choice but to proceed on the basis of the valuation submitted by the applicant (see *Dimitrovi v. Bulgaria* (just satisfaction), no. 12655/09, § 22, 21 July 2016).

20. Taking account of all the evidential material in its possession, the Court considers that the expert report by Aysel-M of 13 December 2004 should be taken as the basis for the assessment of the pecuniary damage in the present case. According to that report, the market value of the applicant's property at the time he was deprived of it was estimated at AZM 588,000,000 or USD 120,000 which, according to the applicant, was equivalent to approximately EUR 90,322 at the time of the interference.

21. The above estimate is not subject to any adjustments in accordance with the *Guiso-Gallisay* principles summarised in paragraph 14 above. No monetary compensation was awarded to the applicant at the domestic level and there has been no information forthcoming from the parties that would indicate that he was allocated a new plot of land (see the principal judgment, § 21).

22. However, the Court notes that, in his observations following the adoption of the principal judgment, the applicant amended his claim, reducing it to EUR 50,000. In this situation, the Court, by virtue of the *non ultra petita* principle, awards the applicant the actual amount claimed.

23. Having regard to the above considerations, the Court awards the applicant EUR 50,000 plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

24. The applicant claimed EUR 10,000 in respect of non-pecuniary damage.

25. The Government submitted that the sum claimed was excessive. They considered that finding of a violation in the present case constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

26. 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

27. The applicant claimed EUR 2,534 in respect of costs and expenses incurred in the proceedings before the Court, namely EUR 1,590 for legal fees, EUR 672 for translation costs and EUR 272 for postal expenses.

28. The Government argued that the part of the claim in respect of translation costs was excessive and that the part of the claim in respect of postal expenses was not supported by any documentary evidence.

29. 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.

30. 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 and translation costs, regard being had to the documents in its possession and the above criteria, the Court awards the applicant EUR 1,900 in respect of the costs incurred before the Court, plus any tax that may be chargeable to the applicant.

D. Default interest

31. 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 50,000 (fifty 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 1,900 (one thousand nine hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 9 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President