



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

FIFTH SECTION

CASE OF AKIF HASANOV v. AZERBAIJAN

(Application no. 7268/10)

JUDGMENT

STRASBOURG

19 September 2019

FINAL

19/12/2019

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

In the case of Akif Hasanov v. Azerbaijan,

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

Angelika Nußberger, *President*,

Gabriele Kucsko-Stadlmayer,

André Potocki,

Yonko Grozev,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 August 2019,

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

PROCEDURE

1. The case originated in an application (no. 7268/10) 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 Akif Hasanov (“the applicant”), on 28 January 2010.

2. The applicant was represented by Mr I. Aliyev, lawyer based in Azerbaijan. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Əsgərov.

3. The applicant alleged, in particular, that the domestic courts’ judgments were not adequately reasoned and that in the appeal proceedings he had not been informed of the time and place of the hearing. He further alleged that he was sentenced to a heavier penalty than the one that was applicable at the time the criminal offence was committed. Subsequently, he also complained that the effective exercise of his right of petition had been hindered by the domestic authorities.

4. On 16 March 2016 notice of the complaints under Articles 6 §§ 1 and 3 (c), 7 § 1 and 34 of the Convention was given to the respondent Governments and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Baku.

6. On an unspecified date in November 2007 the police indicted the applicant before the Khatai District Court on charges of minor hooliganism for insulting N.H. and E.N., the applicant's respective brother and neighbour, in the street.

7. On 20 November 2007, the Khatai District Court found the applicant guilty as charged and sentenced him to five days' administrative detention.

8. The judgment was immediately enforced in accordance with the domestic law and the applicant was accordingly detained.

9. On 26 November 2007, after his release, the applicant appealed against the judgment, arguing that at the time of the alleged offence he had been in hospital, that the first-instance court had relied only on the statement of one of the victims, and that it had not taken into account his disability, which excluded the possibility of his detention.

10. Attached to his appeal, the applicant submitted the release note dated 20 November 2007 issued by Baku No. 2 Clinic Hospital stating that from 31 October until 20 November 2007 the applicant had received treatment at the said hospital.

11. On 12 December 2007 the Baku Court of Appeal dismissed the appeal lodged by the applicant.

12. It appears from the documents in the case file that on 10 November 2008, 7 and 13 January 2009 the applicant sent letters to the Khatai District Court, the Baku Court of Appeal and the Supreme Court complaining about the circumstances of his arrest and detention by the police. In these letters, he did not complain about the Baku Court of Appeal's alleged failure to examine his appeal or to provide him with a copy of a decision in that connection.

13. It further appears from the documents in the case file that following a request by the applicant on an unspecified date in 2009, on 24 August 2009 the Registrar of the Baku Court of Appeal issued to the applicant a copy of the appeal court's decision dated 12 December 2007.

14. According to the Government, the relevant case file containing records of the case had been destroyed owing to the expiration of time provided by the domestic archive regulations.

15. On 8 August 2014 the applicant's lawyer, Mr I. Aliyev, was arrested on charges of tax evasion, illegal entrepreneurship and abuse of authority. During a search of his office, a number of documents were seized by the State authorities, including all the case files relating to applications before the Court that were in the possession of Mr I. Aliyev, as a representative of

applicants before the Court. On 25 October 2014 some of the seized documents were returned to Javad Javadov, Mr. I. Aliyev's lawyer.

16. By a fax dated 28 August 2014, Mr I. Aliyev informed the Court of the seizure of the case files, alleging a breach of Article 34 of the Convention in respect of all the applications affected. In letters that he sent to the Court in September 2014 Mr I. Aliyev reiterated his complaint concerning the seizure of the case files.

II. RELEVANT DOMESTIC LAW

17. The Code of Administrative Offences ("the CAO"), as in force at the material time, provided:

Article 433. Time-limit for the examination of a complaint or protest against a decision delivered in administrative proceedings

"433.1. A complaint or protest against a decision delivered in administrative proceedings shall be examined within ten days of the date of the receipt [thereof].

433.2. If a person who committed an administrative offence is sentenced to administrative detention, a complaint or protest against the decision concerning that administrative detention shall be examined within three days of the date of the receipt of the respective complaint or protest."

Article 437. Pronunciation of a decision delivered in connection with a complaint or protest against a decision delivered in administrative proceedings

"...

437.3. Decision concerning a complaint or protest against a decision concerning administrative detention shall be delivered to an executing organ (authorised person) as well as to a person who is sentenced to administrative detention at the date when it was pronounced."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 §§ 1 AND 3 (c) AND 7 § 1 OF THE CONVENTION

18. The applicant complained that the decisions of the domestic courts had not been adequately reasoned and that his right to a fair and public hearing had been violated in that the Court of Appeal had not informed him of the time and place of the hearing.

19. The applicant also complained that he had been sentenced to a heavier penalty than the one that had been applicable at the time that the alleged criminal offence had been committed, since under the domestic law

second-degree disabled persons could not be sentenced to administrative detention.

20. He relied on Articles 6 §§ 1 and 3 (c) and 7 § 1 of the Convention, which, as far as relevant, read as follows:

Article 6

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

c) to defend himself in person ...”

Article 7

“1. ... Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

A. The parties’ submissions

21. The Government submitted that the applicant had failed to comply with the six-month rule when lodging his application before the Court in 2010. The Government argued that the applicant’s submissions that he had been unaware of the proceedings before the appeal court were doubtful considering the requirement of Article 433.1 of the CAO that a complaint or a protest against a decision delivered in administrative proceedings must be examined within ten days of the date of its receipt. Even if the applicant had not received the decision of the appeal court in his respect in due time, he could still have applied to the registry of the Baku Court of Appeal and obtained a copy thereof.

22. The Government noted that the applicant had not submitted any evidence that he had attempted to obtain a copy of the decision in question before 24 August 2009. In the Government’s view, it was unrealistic that the applicant would have waited for almost two years before requesting the Baku Court of Appeal to issue a copy of the decision and that it was only after he had decided to lodge an application with the Court that he had applied for and received a copy.

23. The applicant maintained that the decision of the Baku Court of Appeal had been obtained only after one year and eight months of lodging numerous, persistent complaints with the various domestic judicial and executive authorities.

B. The Court's assessment

24. The Court has to determine whether this part of the application complies with the admissibility requirements set forth in Article 35 § 1 of the Convention, which provides, in so far as relevant:

“1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken. ...”

25. The purpose of the six-month rule is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable period of time. Furthermore, it is also meant to protect the authorities and other parties concerned from being left in a state of uncertainty for a prolonged period of time (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 39, 29 June 2012).

26. Where no remedies are available or are judged to be ineffective, the six month time-limit in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002). However, special considerations may apply in exceptional cases in which an applicant avails himself of, or relies on, an apparently existing remedy and only subsequently becomes aware of circumstances which render such a remedy ineffective; in such a case it is appropriate to take the start of the six-month period as the date on which he or she first became aware or ought to have become aware of those circumstances rendering the remedy ineffective (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

27. The Court reiterates that where an applicant is entitled to be served automatically with a copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the copy of the written decision, irrespective of whether that decision was previously delivered orally (see *Worm v. Austria*, 29 August 1997, § 33, *Reports of Judgments and Decisions* 1997-V; and *Mahammad Majidli v. Azerbaijan* [Committee] nos. 24508/11 and 44581/13, § 34, 16 February 2017).

28. The Court further reiterates that it is incumbent on an interested party to display special diligence in the defence of his interests and to take the necessary steps to apprise himself of developments in the proceedings (see, among other authorities, *Uruci v. Albania* (dec.), no. 6491/06, 24 January 2012).

29. Turning to the circumstances of the present case the Court notes that the applicant lodged his appeal against the decision of the first-instance court on 26 November 2007. The applicant was not present at the hearing concerning his appeal and there is no evidence that the applicant was *ex officio* served with a copy of the Baku Court of Appeal's decision of 12 December 2007, as he was entitled, within the time frame set by Article 437 of the CAO (see paragraph 17 above). The Court notes the

applicant's allegation that he had persistently complained to various domestic judicial and executive authorities about the Baku Court of Appeal's failure to consider his appeal and to deliver the respective decision and that no response from the authorities followed. The applicant maintained that it was only on 24 August 2009 that he received a copy of the decision delivered by the Baku Court of Appeal on 12 December 2007.

30. However, the Court notes that that assertion was not substantiated by a copy of any relevant complaint or request or any other evidence. On the contrary, it appears from the documents in the case file that in his complaints lodged with various courts the applicant never complained about the Baku Court of Appeal's failure to examine his appeal or to provide him with a copy of its decision (see paragraph 12). Nor did the applicant assert that the case file seized by the Government (see paragraph 15) at any time contained copies of relevant requests lodged by him or that they were distracted from the case file while it was in hands of the Government and that he was for that reason prevented to submit them to the Court.

31. Having examined the facts of the case, the Court considers that given that the time-limit for deciding such appeals under Article 433 of the CAO is three days (see paragraph 17 above) and that the applicant lodged his appeal on 26 November 2007, the applicant should have become aware of an alleged inactivity of the appellate court in respect of his appeal by the end of 2007. Even if the Baku Court of Appeal did fail to summon him and to ensure his participation in the hearing (as well as serving a copy of its decision on the applicant), these facts could not have relieved the applicant of his own, individual obligation to undertake elementary steps and to seek information from the relevant authorities about the outcome of his appeal.

32. Moreover, following the absence of response to his numerous complaints, as the applicant argues before the Court, he should have become aware of the ineffectiveness of the domestic administrative or judicial inquiry in the course of 2008. The alleged absence of any activity in the inquiry of such serious assertions for such a lengthy period of time should have prompted him to draw appropriate conclusions and to introduce the complaint before the Court. The applicant did not provide any information that would justify his inactivity in that respect and his failure to apply directly to the Court without such a long delay. Accordingly, the Court finds that, in the circumstances of the present case, the applicant ought to have concluded long before – and certainly more than six months before – the introduction of the present application that this inquiry was not effective.

33. In the absence of any explanation in this respect, and having regard to the particular circumstances of the present cases, the Court considers that the applicant's unexplained inactivity for more than two years in respect of a possible miscarriage of justice on the part of the appeal court fell foul of a major purpose of the six-month rule under Article 35 § 1 of the Convention (see *Pirali Orujov v. Azerbaijan*, no. 8460/07, §§ 53-58, 3 February 2011).

34. Accordingly, the Court finds that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

II. COMPLIANCE WITH ARTICLE 34 OF THE CONVENTION

35. By a fax of 28 August 2014 the applicant's lawyer introduced a new complaint on behalf of the applicant, arguing that the seizure from his office of the entire case file relating to the applicant's pending case before the Court had amounted to a hindrance to the exercise of the applicant's right of individual petition under Article 34 of the Convention, which reads as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

36. The Government submitted that the documents, including case files concerning applications pending before the Court, were seized from the applicant's representative's office on 9 August 2014, that is more than four years after the application had been submitted to the Court, and were returned on 25 October 2014, that is nearly two years before the applicant's representative was engaged in submission of observations following communication of the complaints. Therefore, the applicant cannot valuably argue that seizure of his case file might have had influenced in any way his communication with the Court at any stage of the proceedings. Moreover, the applicant also failed to provide any substantiation for his complaint and to indicate in which particular way the Government had hindered effective exercise of his right in question.

37. The applicant maintained his complaint.

B. The Court's assessment

38. In *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 64-79, 22 October 2015) having examined an identical complaint based on the same facts, the Court found that the respondent State had failed to comply with its obligations under Article 34 of the Convention. The Court considers that the analysis and finding it made in the *Annagi Hajibeyli* judgment also apply to the present case and sees no reason to deviate from the finding that the deprivation of access for the applicant and his lawyer to their copy of the case file constituted in itself an undue interference and a serious hindrance to the effective exercise of the applicant's right of individual application.

39. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

42. The Government submitted that the amount claimed by the applicant was unsubstantiated and excessive. They considered that, in any event, a finding of a violation would constitute sufficient just satisfaction.

43. The Court considers that the applicant has suffered non-pecuniary damage as a result of the violation found. Having regard to circumstances of the case, the Court considers that it can be compensated for solely by the finding of a violation.

B. Costs and expenses

44. The applicant claimed EUR 4,200 for legal services incurred in the proceedings before the domestic courts and the Court. He submitted the relevant contracts concluded with his representative.

45. The Government considered that the amounts claimed by the applicant were unsubstantiated and excessive. The Government asked the Court to apply a strict approach in respect of the applicant's claims. They further submitted that the contracts had been backdated to November 2007 and that the amounts had been intentionally exaggerated.

46. 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 case, the Court notes that in the proceedings before it the applicant was represented by Mr I. Aliyev, who made identical submissions in a number of other similar applications. Having regard to this fact, as well as to the documents in its possession and the above criteria, the Court considers it reasonable to award to the applicant the sum of EUR 500 covering costs under all heads.

C. Default interest

47. 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. *Declares* the applicant's complaints under Articles 6 §§ 1 and 3 (c) and 7 § 1 of the Convention inadmissible;
2. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
3. *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 500 (five hundred euros), plus any tax that may be chargeable to him, in respect of costs and expenses, to be converted into the currency of the respondent State 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President