



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

FIRST SECTION

CASE OF AKIMOVA v. AZERBAIJAN

(Application no. 19853/03)

JUDGMENT

STRASBOURG

27 September 2007

FINAL

27/12/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Akimova v. Azerbaijan,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 6 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 19853/03) 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, Mrs Valentina Akimova (“the applicant”), on 25 April 2003.

2. The applicant was represented by Mrs N. Huseynova, a lawyer practising in Baku. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr C. Asgarov.

3. The applicant alleged that the postponement of the court order on eviction of internally displaced persons illegally occupying her apartment violated her right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention and her right to a fair trial under Article 6 of the Convention.

4. By a decision of 12 January 2006 the Court declared the application partly admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1950 and lives in Baku.

7. By an order of the Narimanov District Executive Authority (“NDEA”) of 2 June 1993, the applicant was issued, under the state housing policy, an occupancy voucher (*yaşayış orderi*) to a three-room apartment in a state-owned residential building in Baku. The applicant did not move into her new apartment at that time, because the construction of the building had not been completely finished and the tenants had to undertake the repair works in their respective apartments at their own expense.

8. In 1997, pursuant to an oral agreement, the applicant allowed R., an acquaintance of hers, to use the apartment temporarily, free of charge. Under the arrangement reached by the parties, R. was to use the apartment in exchange for certain repair works that he would perform using the materials provided by the applicant. In addition, R. agreed to vacate the apartment whenever the applicant made such a demand.

9. Some unspecified time later, in breach of the existing oral agreement, R. allowed his relative H. and his family (hereinafter to be collectively referred to as “H.”) to move into and live in the apartment. H. were internally displaced persons (“IDP”) from Agdam, a region under control of Armenian military forces following the Armenian-Azerbaijani conflict over Nagorno-Karabakh.

10. When the applicant found out that her apartment was occupied by people unknown to her, she requested that they vacate it. However, H. refused to do so, stating that they had no other place to live. The applicant filed a lawsuit, requesting the court to evict H. from the apartment.

11. On 29 March 2000 the Nizami District Court granted the applicant's request. The court found that, prior to moving into the disputed apartment, H. had been living in the Barda Region and in the Khatai District of Baku where they had been registered as IDPs. They did not dispute the fact that they had settled in the apartment in 1997. The court further found that the applicant was the lawful tenant of the apartment and, as such, had a right to demand H. to vacate it. The court ordered that H. be evicted. H. appealed.

12. On 30 September 2002 the Court of Appeal quashed the district court's judgment. The court held that NDEA's order to issue an occupancy voucher to a partly constructed building had been in breach of the requirements of the domestic law. The court further held that the applicant had not concluded a social tenancy agreement concerning the apartment and, therefore, she could not have a valid claim to it. The court therefore quashed the first-instance court's order to evict H. from the apartment.

13. The applicant filed an appeal in cassation. On 13 December 2002 the Supreme Court reversed the Court of Appeal's judgment and partially upheld the applicant's request. The Supreme Court found that the Court of Appeal erred in judging on the validity of the applicant's occupancy voucher. It held that the applicant's tenancy rights were undisputed and that the proceedings only concerned H.'s right to remain in the applicant's

apartment. The Supreme Court quashed the Court of Appeal's decision in this part.

14. The Supreme Court further ruled that H. should vacate the applicant's apartment. However, taking into account the fact that H. could not return to their permanent place of residence in Agdam and, in the meantime, had no other place in which to reside, the Court held that the execution of its decision should be postponed until they could return to Agdam.

15. Thereafter, based on the applicant's additional cassation appeal, the proceedings were reopened and on 27 January 2005 the Plenum of the Supreme Court quashed the Supreme Court's decision of 13 December 2002. The Plenum noted that, having found errors in the Court of Appeal's judgment, the Supreme Court had no competence under civil procedure law to deliver a new judgment on the merits and, instead, was obliged to quash the Court of Appeal's judgment and refer the case for re-examination by the Court of Appeal. Accordingly, the Plenum found that, although the conclusions reached by the Supreme Court were essentially correct, it had breached the procedural rules by delivering a new judgment on the merits. The Plenum remitted the case to the Court of Appeal.

16. On 7 April 2005 the Court of Appeal delivered a judgment identical to the Supreme Court's decision of 13 December 2002. It ruled that H. should vacate the applicant's apartment. It further held as follows:

“... the claim of V.B. Akimova must be upheld; however, having regard to the fact that the defendants are internally displaced persons from the Agdam Region and do not have another place in which to reside, the execution of the judgment shall be postponed until the Agdam Region is liberated from occupation.”

17. At present, Agdam remains under the control of Armenian forces and the Nagorno-Karabakh conflict remains unresolved. At the time of the latest communication with the parties, H. was still living in the applicant's apartment.

II. RELEVANT DOMESTIC LAW

A. Housing Code of 1 March 1983

18. The Housing Code provides that Azerbaijani citizens are entitled to obtain a right of use of apartments owned by the State or other public bodies, under the terms of a tenancy agreement (Articles 10 and 28).

19. A decision on granting an apartment is to be implemented by way of issuing the citizen with an occupancy voucher (*yaşayış sahəsi orderi*) from the local executive authority (Article 48). The voucher serves as the sole legal basis for taking possession of the apartment designated therein

(Article 48) and for concluding a tenancy agreement (*yaşayış sahəsini icarə müqaviləsi*) between the tenant and the housing maintenance authority (Article 51).

20. The right of use of apartments is granted for an indefinite term (Article 10). The tenant can terminate the tenancy agreement at any moment, with the consent of his or her family members (Article 87). The landlord (the housing maintenance authority) can terminate the agreement only on the grounds provided for by law and on the basis of a court decision (Articles 88-89). If the agreement is terminated because the house is no longer fit for living in, the tenant and family must be provided with a substitute apartment with full amenities (Articles 90 and 96). Tenants or members of their family can be evicted without provision of substitute accommodation only if they “systematically destroy or damage the apartment”, “use it for purposes other than residence” or “systematically breach the [generally accepted rules of conduct], thus making cohabitation with others impossible” (Article 97).

B. Law on Privatisation of Housing of 26 January 1993

21. Individuals residing, pursuant to a tenancy agreement, in apartments owned by the State and other public bodies have a right to transfer these apartments into their private ownership (Article 1). Such privatisation is voluntary and free of charge (Article 2). The right to privatise a State-owned apartment free of charge may be exercised only once (Article 7).

C. Law on Social Protection of Internally Displaced Persons and Individuals Equated to Them of 21 May 1999

22. Article 2 of the Law provides as follows:

“Persons displaced from the places of their permanent residence in the territory of the Republic of Azerbaijan to other places within the territory of the country as a result of foreign military aggression, occupation of certain territories or continuous gunfire, shall be considered as internally displaced persons subject to the provisions of this Law.”

23. Article 5 of the Law provides as follows:

“The relevant executive authority [the Cabinet of Ministers, State Committee on the Refugees' Affairs and local executive authorities, within the scope of their respective competence] shall deal with the housing of internally displaced persons. Residential, administrative and auxiliary buildings, as well as other buildings, shall be used for such housing purposes. Where there is no possibility to house internally displaced persons in such buildings or where the density of population in a specific settlement does not allow such a possibility, they shall be settled in camps specially set up for internally displaced persons. ...

The internally displaced persons may be allowed to temporarily settle on their own only if the rights and lawful interests of other persons are not infringed. Otherwise, the relevant executive authority must ensure re-settlement of the internally displaced persons to other accommodation...”

D. Regulations on Settlement of Internally Displaced Persons in Residential, Administrative and Other Buildings Fit for Residence, adopted by the Cabinet of Ministers Resolution No. 200 of 24 December 1999 (“IDP Settlement Regulations”)

24. Article 4 of the Regulations provides:

“In order to prevent the eviction of the internally displaced persons from dwellings in which they settled during the period of 1992-1994, the legal force of the occupancy vouchers issued by the relevant authorities to individual citizens in respect of those dwellings shall be temporarily suspended...”

E. Regulations on Re-settlement of Internally Displaced Persons to Other Accommodation, adopted by the Cabinet of Ministers Resolution No. 200 of 24 December 1999 (“IDP Re-Settlement Regulations”)

25. In cases where the temporary settling of internally displaced persons breaches the housing rights of other individuals, the former must be provided with other suitable accommodation (Article 4).

F. Code of Civil Procedure of 1 September 2000 (“CCP”)

26. The judge examining a civil case may, upon a petition by a party to the case, decide to postpone or suspend the execution of the judgment or change the manner of execution, due to the parties' property situation or other circumstances (Article 231).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

27. In their memorial of 23 March 2006 the Government raised for the first time the objection that domestic remedies had not been exhausted as the applicant had not availed herself of the possibility to lodge a new cassation appeal against the Court of Appeal's judgment of 7 April 2005.

According to the Government, this remedy became available to the applicant due to the reopening of the proceedings on 27 January 2007.

28. The Court recalls that, pursuant to Rule 55 of the Rules of Court, any plea of inadmissibility must be made by the respondent Party in its observations on the admissibility of the application, in so far as its character and the circumstances permit.

29. The case was communicated to the Government on 1 September 2004 and the Government were requested to submit their observations as to the admissibility of the case before 2 December 2004. This deadline was subsequently extended until 30 December 2004 pursuant to the Government's request. At the time of communication of the application and submission of the Government's observations as to the admissibility of the case, the domestic proceedings had not been reopened and the Supreme Court's decision of 13 December 2002 remained as the final domestic decision in the present case.

30. On 28 January 2005 the Government informed the Court about the reopening of the proceedings and the decision of the Plenum of the Supreme Court of 27 January 2005, which information had been accepted to the case file. However, neither on that occasion nor after the subsequent delivery by the Court of Appeal of its judgment of 7 April 2005, have the Government attempted, either expressly or implicitly, to raise any objection concerning non-exhaustion of domestic remedies prior to the Court's decision on admissibility of the application. The Court declared the application partly admissible on 12 January 2006.

31. Only following the decision on admissibility and after having been invited to submit their observations on the merits of the application, did the Government submit, on 23 March 2006, their objection as to the non-exhaustion of domestic remedies.

32. The Court finds that the Government could have been expected to raise the issue of non-exhaustion after the domestic proceedings had been reopened in the present case or at least following the Court of Appeal's judgment of 7 April 2005, which was delivered well before the Court's admissibility decision of 12 January 2006. As there are no particular reasons which would have absolved the Government from raising their objection in the proceedings on admissibility, they are stopped from doing so now (see *Maurer v. Austria*, no. 50110/99, § 16, 17 January 2002).

33. Accordingly, the Government's preliminary objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

34. The applicant complained that she had been deprived of her property rights in breach of the requirements of Article 1 of Protocol No. 1 to the Convention, which 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.

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. The parties' submissions

35. The Government acknowledged that there had been an interference with the applicant's property rights, but contended that this interference was justified under Article 1 of Protocol No. 1 to the Convention. The Government maintained that the interference was of a temporary nature and was provided by law. Specifically, they argued that the IDP Settlement Regulations (see paragraph 24 above) authorised the postponement of eviction of internally displaced persons from dwellings where they have temporarily settled.

36. The Government further noted that there were more than 700,000 internally displaced persons in Azerbaijan from the areas under Armenian occupation. There existed a strong public necessity to provide the IDPs with housing. The majority of these IDPs were placed in former administrative buildings, public buildings such as hotels and nursing homes, as well as refugee camps. A certain number of IDPs settled in apartments belonging to private individuals. According to the Government, eviction of IDPs from their temporary places of residence would, in effect, leave them homeless and could “lead to social tensions and explosion” and “endanger the public order”. Therefore, the temporary restriction of the applicant's right to enjoy her possessions had a legitimate aim of public interest and was proportionate to this aim.

37. The applicant submitted that the interference with the peaceful enjoyment of her possessions was not prescribed by domestic law. She argued that the IDP Settlement Regulations concerned the prevention of eviction of the IDPs who had settled in places of temporary residence during the period of 1992-1994. However, in her case, the IDPs settled in her apartment in 1997 and, therefore, were not entitled to the protection under the IDP Settlement Regulations. Moreover, the applicant claimed that these

Regulations were in any event irrelevant, since they did not provide any basis for postponement of execution of court judgments, but simply provided for a procedure of suspension of the legal force of occupancy vouchers to residential premises occupied by IDPs in 1992-1994.

38. The applicant further argued that, in any event, even assuming that her property rights had been restricted in accordance with the law and in pursuit of a legitimate aim, the courts had failed to strike a fair balance between the general public interest and the requirements of the protection of an individual's fundamental rights. The applicant contended that she had been forced to bear "an individual and excessive burden", by having her property rights restricted in favour of the IDPs without any compensation. Accordingly, the means employed by the courts were not proportionate to the aim pursued.

B. The Court's assessment

39. The Court recalls that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as property rights, and thus as "possessions" for the purposes of this provision.

40. In the present case, the Court notes that on 2 June 1993 the applicant was issued an occupancy voucher in respect of the apartment in question. The domestic courts subsequently confirmed the applicant as a rightful holder of the occupancy voucher in respect of the apartment. On the basis of the voucher, a so-called "social tenancy agreement" would have been signed between the competent authority and the applicant. Under the terms of this "social tenancy agreement", as established in the Housing Code and the applicable regulations, the applicant would have had a right to possess and make use of the apartment and, under certain conditions, to have ownership transferred to her free of charge in accordance with the Law on Privatisation of Housing.

41. In these circumstances, the Court is satisfied that the applicant's claims to the apartment were sufficiently established to constitute a "possession" falling within the ambit of Article 1 of Protocol No. 1.

42. Article 1 of Protocol No. 1, which in substance guarantees the right of property, comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the

general interest. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37).

43. The Court notes that, despite a judgment ordering the eviction of the IDPs from the applicant's apartment, the applicant cannot regain possession of the apartment for several years because the execution of the judgment has been postponed for an indefinite period of time. In essence, while it was recognised that the applicant was the lawful tenant of the apartment, the IDPs were allowed to remain in possession of her apartment despite the fact that such possession was declared unlawful by the judgment itself. In these circumstances, the Court finds – and it is undisputed by the parties – that there has been an interference with the applicant's property rights. Since the applicant had only tenancy rights to the apartment, this interference neither amounts to an expropriation nor is an instance of controlling the use of property, but comes under the first sentence of the first paragraph of Article 1 of Protocol No. 1.

44. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention. It follows that the issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II, with further references). The terms “law” and “lawful” in the Convention essentially refer back to the domestic law and also relate to the quality of the law, requiring it to be compatible with the rule of law (see *James and Others*, cited above, p. 41, § 67).

45. The Court observes that the domestic judgments, and in particular the Court of Appeal's judgment of 7 April 2005, did not rely on any domestic legal provision which would serve as a basis for postponing the execution of the eviction order. Thus, the domestic courts failed to provide any legal substantiation of their decision to allow the IDPs to continue occupying the apartment belonging to the applicant, despite having found that such occupation was unlawful.

46. Nevertheless, the Government argued that the interference with the applicant's rights was based on the IDP Settlement Regulations (see paragraph 24 above). The Court cannot accept the Government's argument.

The IDP Settlement Regulations contain no rules on civil procedure vesting the domestic courts with the competence to postpone indefinitely the execution of judicial eviction orders, which is what happened in the present case. The IDP Settlement Regulations merely provide for suspension of the legal force of occupancy vouchers issued in respect of dwellings illegally occupied by IDPs. In the present case, there is no evidence showing that the legal force of the applicant's occupancy voucher has ever been suspended. On the contrary, the domestic courts found that the occupancy voucher issued to the applicant was valid and that the applicant was the lawful tenant of the apartment.

47. Moreover, Article 4 of the IDP Settlement Regulations expressly and unambiguously specifies that the protection from eviction extends only to those IDPs who settled, during the years 1992 through 1994, in various dwellings belonging to other individuals. Without prejudging the adequacy and proportionality of this measure, the Court observes that the time period of 1992-1994 corresponds roughly to the period of intensive military actions in Nagorno-Karabakh and surrounding areas when hundreds of thousands of people were forced to flee their permanent places of residence in the conflict area. In the present case, it has been conclusively established by the domestic courts that H. settled in the applicant's apartment in 1997, i.e. approximately three years after the expiry of the "protection period" provided for by the IDP Settlement Regulations and approximately four years after they fled Agdam in 1993. Accordingly, the applicant's case was outside the scope of Article 4 of the IDP Settlement Regulations.

48. The Court also has regard to the provisions of Article 5 of the Law on Social Protection of Internally Displaced Persons and Individuals Equated to Them, as well as Article 4 of the IDP Re-Settlement Regulations, which require the domestic authorities to re-settle IDPs to other accommodation if they, by finding accommodation of their own free will, infringe the housing rights of other individuals (see paragraphs 23 and 25 above). It would appear that, in the present case, the decision to postpone the execution of the judicial eviction order was in breach of these provisions. However, the Government, like the domestic courts, have failed to provide any views on the applicability of these provisions in the present case.

49. Finally, the Court notes that Article 231 of CCP provides for a procedure to postpone the execution of a judgment in certain specific circumstances and based on a petition by a party to the proceedings (see paragraph 26 above). However, in the present case, there were no such petitions filed by the parties and the decision of the domestic courts was not taken pursuant to the procedure under Article 231 of CCP.

50. In such circumstances, the Court considers that the interference in question was in breach of Azerbaijani law and incompatible with the applicant's right to the peaceful enjoyment of her possessions. This conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

51. There has therefore been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

52. The applicant complained under Article 6 § 1 of the Convention that her right to a fair trial had been violated because she had not received a reasoned decision from the domestic courts and because the postponement of execution of the judgment had rendered her right to a fair trial illusory. Article 6 § 1 provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

53. The Government submitted that the impugned judicial decision was reasoned and justified and that the applicant's complaint was unsubstantiated.

54. The applicant argued that the domestic court failed to indicate with sufficient clarity the grounds on which it based the decision to postpone the execution of the judgment in her favour and, thus, breached her right to receive a reasoned judgment. Furthermore, the applicant claimed that the postponement of the judgment's execution until an unspecified date was incompatible with the Convention, because it rendered her right to a fair trial illusory by allowing the binding judgment to remain inoperative to her detriment.

55. The Court considers that the present case does not raise the issue of non-enforcement of a binding judgment, as the execution of the judgment was postponed by the judgment itself and no enforcement proceedings could be instituted (see, *a contrario*, among many other authorities, *Burdov v. Russia*, no. 59498/00, §§ 10 et seq., ECHR 2002-III). As to whether such decision to postpone the execution, in itself, was reasoned and compatible with the Convention, the Court considers that the applicant's complaint and arguments under Article 6 § 1 of the Convention are essentially the same as those examined above under Article 1 of Protocol No. 1. Therefore, having regard to the conclusions set out in paragraphs 50 and 51 above, the Court does not consider it necessary in the present case to examine separately the complaint under Article 6 § 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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.”

57. The applicant sought pecuniary damage in the principal amount of 51,525 United States dollars (USD) which, according to her, constituted the price of a similar apartment in the same area of Baku at the date of submission of her just satisfaction claim, to be increased by 1.3% (the alleged average monthly rate of increase of real estate prices in Azerbaijan) for each month from the date of submission of her just satisfaction claim until the date of the Court's decision on just satisfaction. She also sought USD 30,000 for non-pecuniary damage.

58. The Government did not comment on these claims.

59. The Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the Government and the applicant (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
2. *Holds* that no separate examination is necessary of the applicant's complaint under Article 6 § 1 of the Convention;
3. *Holds* that the question of the application of Article 41 is not ready for decision; accordingly,
 - (a) *reserves* the said question in whole;
 - (b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 27 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President