



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

FIRST SECTION

CASE OF EFENDIYEVA v. AZERBAIJAN

(Application no. 31556/03)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

25/01/2008

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 Efendiyeva v. Azerbaijan,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

Mr L. HUSEYNOV, *ad hoc judge*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 4 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 31556/03) 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 Latifa Talat qizi Efendiyeva (*Lətifə Tələt qızı Əfəndiyeva* – “the applicant”), on 11 September 2003.

2. The applicant, who had been granted legal aid, was represented by Mr M. Mustafayev, a lawyer practising in Baku. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr C. Asgarov.

3. The applicant alleged, in particular, that the failure to enforce the judgment of 9 September 1994 violated her right to a fair trial and right to an effective remedy, as guaranteed by Articles 6 and 13 of the Convention, and her right to peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention.

4. On 15 December 2004 the President of the Chamber decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the application at the same time as its admissibility.

5. Mr K. Hajiyeu, the judge elected in respect of Azerbaijan, withdrew from sitting in the Chamber (Rule 28). The Government accordingly appointed Mr L. Huseynov to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

7. The applicant worked as a head physician (director) of the Republican Maternity Hospital. In December 1993 the Ministry of Healthcare dispatched an “attestation commission” to the applicant's hospital in order to evaluate the applicant's work performance. In its evaluation report, the attestation commission found that the applicant had been incompetent in administering the hospital's affairs and had committed a number of breaches of her job duties. Based on the commission's evaluation report, by an order of the Minister of Healthcare of 30 December 1993, the applicant was dismissed from her job.

8. The applicant sued the Ministry for unlawful dismissal, demanding reinstatement in her position and compensation for lost earnings. On 9 September 1994 the Nasimi District Court found that the attestation commission's report had been largely unsubstantiated. Accordingly, the court held that the applicant's dismissal had been arbitrary and ordered her reinstatement as the head physician of the Republican Maternity Hospital. The court also awarded the applicant 87,045 Azerbaijani manats (AZM) as a compensation for lost earnings.

9. The Ministry of Healthcare did not file any appeals against this judgment and it entered into force. On 14 September 1994 the writ of execution was sent to the Ministry. The Ministry, however, took no action to comply with the judgment. Despite further warnings from the Nasimi District Judge on 13 and 27 October 1994, the Ministry failed to take any steps to execute the judgment.

10. Following the Ministry's continuous failure to comply with the judgment, on 10 January 1995 the Nasimi District Court instituted criminal proceedings against the Minister of Healthcare and referred the case to the Nasimi District Prosecutor's Office for investigation.

11. On an unspecified date in early 1995, the Deputy President of the Supreme Court filed a *protest* against the judgment of 9 September 1994, referring the case for supervisory review by the Presidium of the Supreme Court. On 10 March 1995 the Presidium of the Supreme Court upheld the Nasimi District Court's judgment of 9 September 1994.

12. On 29 May 1996 the Ministry of Healthcare applied to the President of the Supreme Court with a request to reopen the proceedings and refer the case to the Plenum of the Supreme Court for review. By a letter of 12 August 1996, the President of the Supreme Court rejected this request, noting that the law precluded the parties from filing any appeals for

supervisory review in employment-related disputes after a period of one year from the judgment's entry into force.

13. Meanwhile, the Nasimi District Prosecutor's Office, dealing with the investigation of the criminal case against the Minister of Healthcare, was continuously unable to secure the Minister's participation in the investigation process. Despite a number of summonses sent to him, the Minister did not appear before the investigator for interrogation. Accordingly, on 10 June 1995, 10 November 1995, 12 January 1996, 17 March 1996, 20 June 1996, 20 January 1997 and, finally, on 23 July 2001 the investigator of the Nasimi District Prosecutor's Office issued similarly-worded decisions on suspension of the criminal proceedings on the ground of inability to interrogate the Minister due to the latter's continuous failure to appear before the investigator.

14. While the enforcement proceedings were pending, on 27 December 1995 the applicant was hired as a part-time physician to the Baku City Healthcare Department. She worked there until 15 April 2003, when she was dismissed due to staff redundancy.

15. In early 2003, the applicant wrote a letter to the Chief Prosecutor's Office, complaining of the allegedly unjustified delays by the Nasimi District Prosecutor's Office in dealing with the criminal case against the Minister of Healthcare. On 1 February 2003 the Chief Prosecutor's Office forwarded the applicant's complaint for the consideration of the Nasimi District Prosecutor's Office. However, it appears that no further action was taken by the authorities.

16. The applicant then filed a complaint with the Nasimi District Court, claiming that the investigator had unlawfully suspended the criminal proceedings and asking the court to quash the investigator's latest suspension decision of 23 July 2001. On 1 July 2003 the Nasimi District Court upheld the investigator's decision to suspend the criminal proceedings. On 17 July 2003 the Court of Appeal upheld the district court's decision.

17. The applicant filed a lawsuit against the Ministry of Healthcare, the Ministry of Justice and the Ministry of Finance, complaining about the non-enforcement of the judgment and asking for monetary compensation. On 12 October 2004 the Nasimi District Court refused to admit the lawsuit, finding that the applicant's claim concerning reinstatement and compensation had already been granted by the judgment of 9 September 1994.

18. On 24 November 2004 the Court of Appeal quashed the Nasimi District Court's decision of 12 October 2004, ruling that the first instance court's decision on the inadmissibility of the compensation claim was incorrect. The case was remitted for examination on the merits.

19. On 17 June 2005 the Nasimi District Court rejected the applicant's compensation claim, finding that the claim was barred by the three-year

statute of limitations which had started to run from the date of the entry into force of the judgment of 9 September 1994. On 20 April 2006 the Court of Appeal upheld this judgment. On 12 July 2006 the Supreme Court quashed the Court of Appeal's judgment and remitted the case for re-examination.

20. Finally, on 25 May 2007 the Court of Appeal re-examined the case, quashed the Nasimi District Court's judgment of 17 June 2005, and awarded the applicant 5,036.87 New Azerbaijani manats (AZN)¹ in compensation for earnings lost due to non-execution of the judgment of 9 September 1994. On 2 July 2007 the applicant filed a cassation appeal against the Court of Appeal's judgment of 25 May 2007, claiming a higher amount of compensation. This appeal was pending before the Supreme Court as of the time of the latest communication with the parties.

21. Meanwhile, in late 2005 the Minister of Healthcare was dismissed from his position and charged with a number of criminal offences, including offences involving abuse of official power. On 20 April 2007 the Assize Court convicted the Minister of Healthcare on several counts, one of them being his failure to execute the judgment of 9 September 1994 ordering the applicant's reinstatement to her previous job.

22. On 11 July 2007, by the order of the new Minister of Healthcare, the applicant was reinstated to her position of the head physician of the Republican Maternity Hospital in accordance with the judgment of 9 September 1994. On 13 July 2007 the applicant was paid AZN 5,036.87 awarded by the Court of Appeal's judgment of 25 May 2007.

23. On 20 July 2007 the Nasimi District Court terminated the enforcement proceedings in respect of the judgment of 9 September 1994.

II. RELEVANT DOMESTIC LAW

A. Law of the Azerbaijan SSR on Healthcare of 2 July 1971 (repealed on 2 April 1999)

24. According to Article 9, the Ministry of Healthcare manages institutions, enterprises and organisations which are directly subordinate to it and is responsible for the quality of medical assistance provided to the population.

B. Law on the Protection of Public Health of 26 June 1997

25. According to Article 4, the state healthcare system includes the relevant executive authority of the Republic of Azerbaijan (i.e. the Ministry

1. Pursuant to denomination of national currency effective from 1 January 2006, AZN 1 is equal to AZM 5,000.

of Healthcare), medico-prophylactic, scientific-research, educational, pharmaceutical and sanitary-prophylactic institutions, as well as institutions dealing with logistical support to healthcare system, institutions producing medical equipment and medicines, as well as sanitary and epidemiological services and forensic examination institutions.

26. According to Article 5, the private healthcare system comprises medical institutions in private ownership or private leasehold which operate in the manner specified by law, including *inter alia* individuals engaging in private medical practice or pharmaceutical activities.

27. According to Article 9, the state healthcare system is financed mainly from the state budget, as well as funds from mandatory medical insurance, voluntary donations from various enterprises and individuals, as well as other sources not prohibited by law. The funds of the state healthcare system are directed *inter alia* for preparation and implementation of healthcare programmes, development of logistical resources of state healthcare institutions, maintaining of medico-prophylactic and sanitary-epidemiological institutions, development of medical science, and other purposes.

28. According to Articles 55 and 56, employment rights of persons working in the healthcare system shall be regulated by employment contracts.

C. Labour Code of 1999

29. In accordance with Article 74, if a court delivers a judgment ordering reinstatement to the former post of an employee who has been unlawfully or groundlessly dismissed from his or her job, the employer must immediately execute the court's judgment and reinstate the employee in his or her former post (or another post subject to the employee's consent).

D. Law on Civil Service of 1 September 2001

30. According to Article 2, the provisions of this Law apply to civil servants performing their service duties in the state executive, legislative and judicial authorities, as well as in the prosecution, justice, national security, border service, internal affairs, customs, tax, foreign affairs, courier communication authorities and the National Bank. The Law does not apply to employees of various enterprises subordinated to state executive authorities. Issues related to employment of such employees are regulated by the Labour Code.

E. Regulations on Head Physician of a Maternity Hospital, approved by the Order of the USSR Ministry of Healthcare of 8 April 1980

31. The head physician has full authority to manage the maternity hospital and is responsible for all medico-prophylactic, administrative and financial activities of the hospital (§ 1), and is in direct subordination of the relevant state authority for public healthcare (i.e. the Ministry of Healthcare) (§ 3). The head physician is directly responsible for, *inter alia*, quality of medical assistance provided to hospitalised women and newborn babies, staff management, rational use and management of the hospital's material resources and equipment, ensuring the observance of sanitary and hygienic standards and carrying out necessary anti-epidemic measures, and other management activities (§ 7). The head physician is obliged, *inter alia*, to draw up and submit to the supervising authorities the hospital's budget as well as statistical, financial and economic reports on the hospital's activities.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

32. Relying on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained about the non-enforcement of the Nasimi District Court's judgment of 9 September 1994. Article 6 § 1 of the Convention reads as follows:

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

Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Article 1 of Protocol No. 1 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. ...”

A. Admissibility

1. *The Court's competence ratione temporis*

33. The Court recalls that it is only competent to examine complaints of violations of the Convention arising from events that have occurred after the Convention had entered into force with respect to the High Contracting Party concerned (see, for example, *Kazimova v. Azerbaijan* (dec.), no. 40368/02, 6 March 2003). The Court notes that the Convention entered into force with respect to Azerbaijan on 15 April 2002.

34. Accordingly, the Court's competence is limited to the part of the application relating to the events that occurred after 15 April 2002, whereas the remainder of the application falls outside of its competence *ratione temporis*. Nevertheless, where necessary, the Court shall take into account the state of affairs as it existed at the beginning of the period under consideration.

2. *Applicability of the Convention provisions to the present case*

35. Referring to *Pellegrin v. France* ([GC], no. 28541/95, ECHR 1999-VIII), the Government argued that Article 6 did not apply to the proceedings in question. The Government maintained that the applicant, in her former capacity as the head physician of the Republican Maternity Hospital, had been a civil servant and had responsibilities affecting matters of general interest and participated in the exercise of powers conferred by public law, wielding a portion of the sovereign power of the State. Specifically, referring to the Regulations on Head Physician of a Maternity Hospital, approved by the Ministry of Healthcare of the USSR on 8 April 1980 ("the Regulations"), which, according to the Government, were in force at the time of the applicant's dismissal, the Government claimed that the post of a head physician involved responsibility for the medico-prophylactic, administrative and financial activities of the state-owned hospital.

36. The Government further argued that the complaints under Article 13 of the Convention and Article 1 of Protocol No. 1 should be considered in conjunction with the complaint under Article 6 and were therefore likewise inapplicable to the present case on the same grounds.

37. The applicant disagreed, claiming that the Regulations could not be interpreted as classifying head physicians of maternity hospitals as civil servants. Instead, the Regulations merely established "general standards" for the post of a head physician, regardless of whether the hospital was public or private. The applicant noted that, according to Article 2 of the Law on Public Service, only employees in the service of specified State authorities could be considered as civil servants. In support of her position, the applicant submitted a letter from the Ministry of Labour and Social

Protection, sent to her on 3 May 2005 in reply to her inquiry, which stated that the post of the head physician of the Republican Maternity Hospital did not belong to the category of public-service posts.

38. At the outset, the Court notes that, even if the complaint concerns only lengthy non-enforcement of a final judgment as in the present case, the Court will examine whether Article 6 § 1 applies to the “trial” resulting in that judgment, because the ensuing enforcement proceedings must be regarded as an integral part of that “trial” (see *Kanayev v. Russia*, no. 43726/02, § 19, 27 July 2006; see also paragraph 49 below).

39. The Court recalls that, for Article 6 § 1 to be applicable under its “civil” limb, there must be a dispute over a “right” that can be said, at least on arguable grounds, to be recognised in domestic law. The dispute must be genuine and serious. It may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Moreover, the outcome of the proceedings must be directly decisive for the civil right in question (see, for example, *Stojakovic v. Austria*, no. 30003/02, § 38, 9 November 2006, and *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII). In the present case, it is uncontested that there was a “dispute” over a right recognised under domestic law, that the dispute was genuine and serious and that the outcome of the proceedings was directly decisive for the right concerned.

40. Furthermore, in order to determine the applicability of Article 6 § 1 to civil servants, whether established or employed under contract, the Court previously used a functional criterion based on the nature of the employee's duties and responsibilities. The only disputes excluded from the scope of Article 6 § 1 of the Convention were those which were raised by civil servants whose duties typified the specific activities of the public service in so far as the latter was acting as the depositary of public authority responsible for protecting the general interests of the State or other public authorities (see *Pellegrin*, cited above, §§ 64-66).

41. However, the Court notes that it has recently changed this approach, finding that the functional criterion adopted in the *Pellegrin* case must be further developed (see *Eskelinen and Others v. Finland*, no. 43803/98, §§ 50-56, 19 April 2007). Specifically, the Court held in the *Eskelinen* case that it is primarily for the Contracting States, in particular the competent national legislature, and not the Court, to identify expressly those areas of public service involving the exercise of the discretionary powers intrinsic to State sovereignty where the interests of the individual must give way. If a domestic system bars access to a court, the Court will verify that the dispute is indeed such as to justify the application of the exception to the guarantees of Article 6. If it does not, then there is no issue and Article 6 § 1 will apply. It is for the respondent Government to demonstrate, first, that a civil-servant applicant does not have a right of access to a court under national law and,

second, that the exclusion of the rights under Article 6 for the civil servant is justified (*ibid.*, §§ 61-62).

42. In the present case, it is undisputed that under national law the applicant had access to a court to challenge the lawfulness of her dismissal. It follows that Article 6 of the Convention is applicable.

43. Finally, the Court finds no circumstances precluding the applicability of Article 13 of the Convention and Article 1 of Protocol No. 1 to the present case.

3. *The applicant's victim status*

44. The Government initially argued that the judgment of 9 September 1994 had been enforced because, on 27 December 1995, the applicant was appointed as a part-time physician to the Baku City Healthcare Department. However, the Court finds that the applicant's appointment to a part-time position of a lower grade in a healthcare institution of a different type does not amount to enforcement of the judgment of 9 September 1994. Moreover, the enforcement proceedings were not closed and were still pending at the time of the applicant's appointment to this position (compare with *Tarverdiyev v. Azerbaijan*, no. 33343/03, §§ 39-43, 26 July 2007). It follows that this part of the Government's objection must be rejected.

45. Following the applicant's actual reinstatement as the head physician of the Republican Maternity Hospital on 11 July 2007 and payment of the compensation for lost earnings, the Government argued that the applicant could no longer be considered as a "victim" as the violations of her Convention rights had been remedied on the domestic level.

46. The applicant disagreed. She noted that the judgment had remained unenforced for almost thirteen years and argued that the amount of compensation paid to her for such a long delay was substantially lower than it should have been and did not take into consideration interests accrued on the late payment of salaries.

47. The Court recalls that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application.

48. The Court notes that the full enforcement of the judgment of 9 September 1994 and payment of compensation for lost earnings may have arguably constituted an acknowledgment by the authorities of the alleged violations of the Convention. However, even assuming that there has been such an acknowledgment, the Court considers that the authorities

nevertheless failed to afford full redress to the applicant for the following reasons.

49. Having regard to the fact that the judgment had remained unexecuted for almost thirteen years, of which more than five years fall into the period after the Convention's entry into force in respect of Azerbaijan, the Court finds that the amount of compensation awarded to the applicant cannot be considered as a full redress for the breach of the applicant's Convention rights. Moreover, the compensation awarded to the applicant was meant to cover only the lost earnings and no compensation was offered in respect of the alleged violation of the Convention, i.e. lengthy non-enforcement of the judgment of 9 September 1994, which must have caused the applicant distress.

50. In such circumstances, while it is true that the applicant has now been reinstated in her previous job in accordance with the judgment of 9 September 1994, as well as awarded a certain amount of compensation for lost earnings, the Court finds that the measures taken in the applicant's favour were nevertheless insufficient to deprive her of the "victim" status in the present case (compare with *Ramazanova and Others v. Azerbaijan*, no. 44363/02, § 38, 1 February 2007).

51. Accordingly, the Court rejects the Government's objection as to the applicant's loss of victim status.

4. Conclusion

52. Having regard to its findings above, the Court further notes that the complaints are not inadmissible on any other grounds and that they are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. They must therefore be declared admissible in the part relating to the period after 15 April 2002.

B. Merits

1. Articles 6 § 1 and 13 of the Convention

53. The Government did not submit any observations on the merits of these complaints other than reiterating their argument that the judgment had been enforced. In this regard, the Court refers to its findings in the paragraphs 44-51 above.

54. The applicant maintained her claims.

55. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a

Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings could lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, p. 510, § 40).

56. The Court further recalls that a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). In the instant case, the applicant should not have been prevented from benefiting from the success of the litigation, which concerned the reinstatement of the applicant in her job after wrongful dismissal as well as the payment of compensation for pecuniary damage.

57. The Court notes that, from the date of the Convention's entry into force with respect to Azerbaijan on 15 April 2002, the Nasimi District Court's judgment of 9 September 1994 remained unenforced for almost five years and three months. Before 15 April 2002, the judgment had not been enforced for approximately seven and a half years. No reasonable justification was advanced by the Government for this delay.

58. By failing for years to take the necessary measures to comply with the final judgment in the present case, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect (see *Burdov*, cited above, § 37). There has accordingly been a violation of Article 6 § 1 of the Convention.

59. The Court does not consider it necessary to rule on the complaint under Article 13 of the Convention because Article 6 is *lex specialis* in regard to this part of the application (see, for example, *Jasiūnienė v. Lithuania*, no. 41510/98, § 32, 6 March 2003).

2. Article 1 of Protocol No. 1 to the Convention

60. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59).

61. The Nasimi District Court's judgment awarded the applicant AZM 87,045 in compensation, which constituted an enforceable claim. Although the judgment had become final and the enforcement proceedings

had been instituted, the judgment remained unenforced for almost five years and three months after the Convention's entry into force with respect to Azerbaijan. It follows that the impossibility for the applicant to obtain the execution of this judgment constituted an interference with her right to peaceful enjoyment of her possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

62. By failing to comply with the judgment of 9 September 1994 in a timely manner, the national authorities prevented the applicant from being paid the money she could reasonably have expected to receive. The Government have not advanced any plausible justification for this interference (see *Burdov*, cited above, § 41).

63. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

64. The applicant complained under Article 10 of the Convention that she had been prevented by the authorities from expressing in the media her opinions concerning the actions of the Minister of Healthcare and other authorities who, collectively, avoided the execution of the judgment of 9 September 1994. Article 10 provides as follows:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...”

65. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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.”

67. The applicant claimed 54,953 euros (EUR) in respect of pecuniary damage, EUR 150,000 in respect of non-pecuniary damage and EUR 4,128 for costs and expenses.

68. The Government contested the applicant's claims in respect of pecuniary and non-pecuniary damage and did not make any submissions in respect of the costs and expenses.

69. 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. *Declares* the complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *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 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President