



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

FIRST SECTION

CASE OF RAHIMOVA v. AZERBAIJAN

(Application no. 21674/05)

JUDGMENT

STRASBOURG

17 January 2008

FINAL

07/07/2008

This judgment may be subject to editorial revision.

In the case of Rahimova v. Azerbaijan,

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

Christos Rozakis, *President*,

Loukis Loucaides,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 21674/05) 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, Ms Natalia Onufriyevna Rahimova (*Nataliya Onufriyevna Rəhimova* – “the applicant”), on 2 June 2005.

2. The applicant was represented by Ms S. Suleymanova, 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 civil proceedings in the domestic courts had failed to meet the requirement of “reasonable time” and that, as a result, her right to respect for her home and her property rights had been violated.

4. On 29 May 2006 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. Both the Government and the applicant failed to submit any observations on the admissibility and merits of the application within the time-limits specified by the Court. However, in her letter of 2 October 2007, the applicant indicated her intention to pursue the application on the basis of the materials available in the case file.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1949.

7. The applicant lived with her family in an apartment in Baku. On 18 November 1999 her apartment was damaged by fire caused by the occupants of the neighbouring apartment. The neighbouring apartment was owned by A., a police officer. According to the applicant, her apartment became unfit to live in and she and her family had to move out and find temporary accommodation.

8. On 15 January 2001 the applicant brought an action against A., seeking monetary compensation of an amount equivalent to 10,000 US dollars for damage caused to her apartment. The Sabunchu District Court instituted civil proceedings.

9. It appears that for several years after this the Sabunchu District Court fixed dates for several hearings, all of which were postponed either due to the defendant's failure to appear or for other unspecified reasons.

10. On 12 August and 29 September 2003 the applicant sent two similar letters to the President of the Sabunchu District Court, complaining of the court's failure to conduct the proceedings in a timely manner.

11. On 23 June 2004 and 15 December 2004 the applicant complained to the Ministry of Justice and the Ombudsman about the Sabunchu District Court's failure to examine her case.

12. On 16 February 2005 she wrote a letter addressed to the President, Chief Prosecutor, President of the Supreme Court, President of the Court of Appeal, Chairman of the Milli Majlis and other authorities, complaining about the length of proceedings in the first-instance court.

13. It is unclear whether the applicant received any replies to her letters.

14. In the meantime, on an unspecified date in August 2004 the Sabunchu District Court sought an expert opinion on the damage caused to the applicant's apartment by the fire. On 27 August 2004 the expert issued an opinion, according to which the damage was estimated at 2,537,000 Azerbaijani manats (AZM).

15. On 31 January 2005 the Sabunchu District Court held a hearing and delivered its judgment, partially upholding the applicant's claim and awarding her AZM 2,637,000. This amount included compensation for damage of the amount estimated by the expert, as well as compensation for court fees paid by the applicant. According to the applicant, she received the full text of the judgment on 31 May 2005.

16. The applicant lodged an appeal, claiming that the amount awarded was too low and did not reflect the actual damage caused. On 13 July 2005 the Court of Appeal upheld the first-instance court's judgment. Following

an appeal in cassation by the applicant, on 6 October 2005 the Supreme Court upheld the lower courts' judgments.

II. RELEVANT DOMESTIC LAW

17. In accordance with Article 172.1 of the Code of Civil Procedure of 2000, a court of first instance must examine a civil case and deliver a judgment within three months of the date the civil action is lodged with the court. Shorter examination periods are required for certain categories of cases (Articles 172.2 and 172.3).

18. Immediately after the conclusion of the last hearing of the case, the first-instance court must deliberate and deliver a judgment (Articles 213 and 214.1). The full text of the judgment must be drafted at this time and sent to the parties within three days (Articles 227.1 and 227.3).

19. In complex cases, the court may decide to deliver only the operative provisions of the judgment after the hearing (Article 214.3). In such an event, the parties and their representatives must be informed of the date when the full text of the judgment will be available (Article 214.4).

20. In exceptional circumstances where the case is particularly complex, the first-instance court may deliver either the full judgment or its operative provisions no later than three days after the end of the judicial examination of the case (Article 215). If only the operative provisions of the judgment have been delivered, the full text of the judgment must be drafted within the next ten days. The presiding judge must inform the parties of the date when the full text of the judgment will be available (Article 227.2).

THE LAW

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

21. The applicant complained that the length of the civil proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

22. The applicant also complained of a lack of an effective remedy within the meaning of Article 13 of the Convention in respect of her complaint of the excessive length of proceedings. This provision 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.”

23. As both parties failed to submit any observations within the time-limits indicated by the Court, the Court will examine the complaints on the basis of the materials available.

A. Admissibility

24. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

25. The Court observes that the civil proceedings in the present case were instituted on 15 January 2001 and ended with the Supreme Court’s final decision of 6 October 2005. Thus, in total, the proceedings in three instances lasted more than four years and eight months.

26. As the Convention entered into force with respect to Azerbaijan on 15 April 2002, the period to be taken into consideration in the present case amounted to three years, five months and twenty-three days in the post-ratification period. Nevertheless, in order to determine the reasonableness of the length of time in question, regard must also be had to the state of affairs that existed at the beginning of the period under consideration (see, for example, *Proszak v. Poland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31).

27. The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court’s case-law, in particular the complexity of the case, the applicant’s conduct and the conduct of the competent authorities, and what was at stake for the applicant (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

28. As the proceedings concerned compensation for damage caused to the applicant’s apartment, the Court considers that much was at stake for the applicant and that special diligence was required from the domestic courts

in view of the possible consequences which the excessive length of proceedings might have on her enjoyment of her home and possessions.

29. Having regard to the nature of the case, the Court finds that it was not complex. Apart from hearing the parties, the only procedural action undertaken by the courts was obtaining an expert opinion on the damage caused to the applicant's apartment.

30. Furthermore, nothing in the case file indicates that the applicant's conduct contributed to the length of the proceedings. As regards the conduct of the authorities, the Court notes that, although the appellate and cassation proceedings, taken separately, could not be considered excessively protracted, there was a considerable delay at the first-instance stage of the proceedings (compare with, *mutatis mutandis*, *Aresti Charalambous v. Cyprus*, no. 43151/04, § 45, 19 July 2007). In particular, the first-instance proceedings lasted more than four years (from 15 January 2001 to 31 January 2005), out of which more than two years and nine months fell within the period after the Convention's entry into force with respect to Azerbaijan on 15 April 2002. The only event that appears to have happened during this period was the obtaining of the expert opinion in August 2004. However, there were significant periods of inactivity, both prior to this event and between this event and the hearing held on 31 January 2005. Moreover, the full text of the Sabunchu District Court's judgment of 31 January 2005 was made available to the applicant with a delay of four months. This also contributed to the prolongation of the proceedings, as the applicant could not appeal to the higher courts during this period.

31. In such circumstances, the Court considers that, in the present case, the significant and unjustified periods of inactivity which occurred at the first-instance stage contributed significantly to the prolongation of the proceedings as a whole. In this connection, the Court reiterates that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to hear cases within a reasonable time (see *Pélissier and Sassi*, cited above, § 74, and *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII).

32. Having regard to the considerations above, the Court finds that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Article 13 of the Convention

33. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). A remedy is "effective" if it can be used either to expedite a decision by the courts dealing with the case,

or to provide the litigant with adequate redress for delays that have already occurred (ibid., §§ 157-59).

34. Although the applicant has tried, unsuccessfully, to have the proceedings expedited by complaining to various domestic authorities (see paragraphs 10-13 above), it does not appear that, at the relevant time, there was an effective domestic remedy available to the applicant in respect of the length of the proceedings. No information has been forthcoming from the Government to indicate any remedy that could have expedited the determination of the applicant's case or provided her with adequate redress for delays that had already occurred (see, among many other authorities, *Kormacheva v. Russia*, no. 53084/99, § 61, 29 January 2004; *Merit v. Ukraine*, no. 66561/01, § 78, 30 March 2004; and *Gavrielides v. Cyprus*, no. 15940/02, §§ 51-52, 1 June 2006).

35. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby she could enforce her right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

II. ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

36. The applicant complained that the domestic courts' failure to hear her case within a reasonable time had resulted in a violation of her right to respect for her home, as guaranteed by Article 8 of the Convention, which provides as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

37. She also complained that the excessive length of the proceedings had led to a violation of her right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1, 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."

38. The Court notes that these complaints are linked to those examined above and must therefore likewise be declared admissible.

39. However, having regard to its findings in paragraphs 31-32 above, the Court considers that, in the circumstances of the present case, no separate issues arise under Article 8 of the Convention and Article 1 of Protocol No. 1 and, therefore, it is not necessary to examine these complaints separately.

III. ARTICLE 14 OF THE CONVENTION

40. The applicant complained under Article 14 of the Convention, in conjunction with her other complaints, that she had been discriminated against. She contended that the domestic courts had been biased in the defendant's favour, because he was a police officer.

41. 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 right set out in Article 14 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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.”

43. The applicant did not submit a claim for just satisfaction in the manner required by Rule 60 of the Rules of Court. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 6 § 1, 8 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 has been a violation of Article 13 of the Convention;

4. *Holds* that there is no need to examine the complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;
5. *Holds* that there is no call to award any just satisfaction.

Done in English, and notified in writing on 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President