



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

11 December 2008

FINAL

11/03/2009

This judgment 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:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinvernì, *judges*,

Latif Huseynov, *ad hoc judge*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 November 2008,

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. In a judgment delivered on 25 October 2007 (“the principal judgment”), the Court held that there had been violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention due to non-enforcement of a final judgment ordering the applicant’s reinstatement in her job (the principal judgment, §§ 53-63).

3. Under Article 41 of the Convention the applicant sought just satisfaction of several hundred thousand euros for damage sustained and costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 69, and point 5 of the operative provisions).

5. The applicant and the Government each submitted observations and replied to each other’s observations.

THE LAW

6. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

1. *Pecuniary damage*

(a) The parties' submissions

7. In respect of pecuniary damage, the applicant claimed 893,114.74 New Azerbaijani manats (AZN) for lost earnings. In particular, she claimed (a) the principal amount of AZN 35,316 for outstanding salary for the period of 162 months (from January 1994 to June 2007); and (b) interest accrued on the above in the amount of AZN 863,476, calculated at the rate of 1% for each calendar day of delay in payment of each month's salary. The amount of AZN 5,677.26, paid to the applicant pursuant to the Supreme Court's decision of 18 January 2008, was deducted from the sum of the previous two amounts, bringing the total to AZN 893,114.74.

8. As for the principal amount of the outstanding salary, the applicant originally claimed the actual rate of each month's unpaid salary, applicable at the relevant time. The salary rate had been increased numerous times during the approximately thirteen-year period while the judgment of 9 September 1994 remained unenforced, and was significantly lower in 1994 than at the time of the execution of the judgment on 11 July 2007, when the applicant was finally reinstated in her job. However, following the delivery of the principal judgment, the applicant submitted an amended claim and maintained that all the unpaid monthly salary corresponding to the period of delay in execution should be calculated at the rate of the current salary (AZN 218, which was higher than all previous rates).

9. The Government argued that the application of the current salary rate to the unpaid salary during the entire period of delay in execution was unsubstantiated. The Government further submitted that such a “baseless” amendment of the original claim appeared to be an effort to “exceed reasonable limits of just satisfaction” and to obtain unjust enrichment.

10. As for the accrued interest, the applicant claimed interest at the rate of 1% for each day of delay in payment of each month's salary during the period of delay in execution of the judgment of 9 September 1994,

calculated up to June 2007. She relied on Article 172.5 of the Labour Code, which provided:

“If the payment of salary is delayed due to the fault of the employer, and if this has not resulted in an individual labour dispute, the employee shall be paid interest in the amount of at least one per cent of the salary for each day of delay in payment.”

11. Relying on the reasoning in the Supreme Court’s decision of 18 January 2008, the Government contested this claim, arguing that Article 172.5 of the Labour Code did not apply in the present case, as the delay in payment of salary to the applicant has “resulted in an individual labour dispute”. In such an event, Article 300 of the Labour Code applied, which provided that the compensation awarded to an employee for unlawful dismissal should include, *inter alia*, only “the average salary of the employee during the period of his or her absence from work” without any fixed-rate interest accrued. The Government maintained that the applicant had been fully compensated for her lost earnings by the Supreme Court’s decision of 18 January 2008.

12. The applicant disagreed, arguing that the only “labour dispute” between her and her employer had already been resolved by the judgment of 9 September 1994, which had not been enforced for almost thirteen years. According to the applicant, the subject matter of the current case is not a labour dispute between her and her employer, but a compensation for late execution of the final and binding judgment of 9 September 1994 as a result of which she had not been paid, in a timely manner, the salary to which she had been entitled.

(b) The Court’s assessment

13. The Court points out that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, pp. 58-59, § 34).

14. If the internal law allows only partial reparation to be made, Article 41 of the Convention gives the Court the power to award compensation to the party injured by the act or omission that has led to the finding of a violation of the Convention. The Court enjoys a certain discretion in the exercise of that power, as the adjective “just” and the phrase “if necessary” attest (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

15. At the outset, the Court notes that on 11 July 2007 the applicant was reinstated in her position of head physician of the Republican Maternity Hospital in accordance with the judgment of 9 September 1994 (see the principal judgment, § 22). On 18 January 2008 the Supreme Court awarded the applicant AZN 5,677.26 in compensation for pecuniary damage

sustained as a result of the delayed enforcement of the judgment. The applicant has been paid this amount.

16. The Court notes that, as a result of the lengthy non-enforcement of the judgment of 9 September 1994 ordering her reinstatement, the applicant was unable to return to her job and receive the wages to which she was entitled. Therefore, the Court considers that there is a causal link between the violations found and the applicant's claims in respect of lost earnings.

17. The applicant's claim goes back to January 1994, when she was dismissed from her job. However, the Court reiterates its finding in the principal judgment that the period prior to 15 April 2002, the date of the Convention's entry into force with respect to Azerbaijan, fell outside the Court's competence *ratione temporis* (ibid., § 34). Therefore, no award can be made in respect of any damage suffered prior to 15 April 2002 and the Court will take into consideration only claims relating to the period after that date.

18. The Court does not accept the applicant's argument that the total principal amount of all salary arrears should be calculated at the current rate of the applicant's salary. Such a method of calculation would not reflect the actual pecuniary loss sustained. The Court considers that, as to the principal amount of lost earnings, the applicant can claim only the sum of the salary she would have been entitled to receive had she been reinstated in her job in a timely manner, at actual rates applicable at various times throughout the relevant period.

19. The Court notes that, in her original just satisfaction claim submitted prior to the delivery of the principal judgment, the applicant specified the exact salary rates applicable for each month during the period from January 1994 to March 2005. However, she has not submitted any information on exact salary rates applicable during the period between April 2005 and July 2007, as in her amended claim her calculations for each month's salary throughout the entire period of non-execution were based on the current salary rate. Neither the Government's observations nor the Supreme Court's decision of 18 January 2008 contained any breakdown of the salary to which the applicant was entitled each month. Nevertheless, as far as it is possible to deduce from other materials available in the case file even in the absence of this specific information, the total amount of salary due to the applicant in the period from 15 April 2002 to 11 July 2007 constituted approximately AZN 4,250.

20. As to the interest claimed by the applicant, the Court accepts her argument that, as there has been a decrease in value of the delayed salary due to inflation, deferred consumption, opportunity cost or other factors, she is entitled to additional compensation for that decrease in value and that the compensation can be calculated on the basis of an interest rate applied on the principal amount of each of her delayed salary payments.

21. In this regard, the Court notes that the applicant, relying on Article 172.5 of the Labour Code, claimed 1% interest for each calendar day of delay in payment of each monthly salary, while the Government argued that Article 172.5 did not apply in the present case. The Court reiterates that it is in the first place for the national authorities, and notably the courts, to interpret domestic law and that the Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see *Salov v. Ukraine*, no. 65518/01, § 95, ECHR 2005-VIII (extracts)). As to the substance of the parties' disagreement as to the applicability of Article 172.5 of the Labour Code, the Court will limit itself to reiterating that, in determining the amount of damages to be awarded under Article 41 of the Convention, it is not bound by any provisions of the domestic law such as the labour law provisions concerning interest on delayed salary payments. However, in doing so, it may take into account any relevant domestic interest rates, in so far as they are reasonable, as a useful guide in determining the amount of the pecuniary loss suffered.

22. The 1% daily interest rate proposed by the applicant, in essence, corresponds to an annual interest rate of 365%. For a rough comparison, it suffices to note that, according to the publicly available information, the annual average inflation for consumer prices in Azerbaijan was around 17% in 2007 and significantly lower than that in the preceding years going back to 2002. It therefore appears that application of the interest rate proposed by the applicant would result in an amount grossly exceeding the actual damage sustained by her. In the Court's opinion, such a high rate is unreasonable and clearly excessive for the purposes of determining the compensation that is "just" within the meaning of Article 41.

23. Moreover, it appears that the daily interest rate of 1% provided by Article 172.5 of the Labour Code, in its essence, constitutes a statutorily fixed financial penalty designed not only to compensate employees for actual losses, but also to deter employers from delaying the payment of salaries. A claim against the State based on such an interest rate can be compared to a claim for punitive damages. The Court notes, however, that it has repeatedly rejected requests by applicants for punitive, exemplary or aggravated damages (see, among other authorities, *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports of Judgments and Decisions* 1998-II, § 119; *Cable and Others v. the United Kingdom* [GC], nos. 24436/94 *et seq.*, 18 February 1999, § 30; and *Orhan v. Turkey*, no. 25656/94, § 448, 18 June 2002).

24. The parties have not proposed any other means of calculating compensation for the decrease in value of the delayed payment of salary, although the inflation rate or average lending rate applicable at the relevant time periods, or a combination thereof, could serve as reasonable alternatives (see, *mutatis mutandis*, *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 23, 28 May 2002).

25. In any event, even if a particular interest rate were to be applied, it would not be possible to calculate the interest in the present case for the following reasons. For the purposes of such a calculation, the interest rate would need to be applied separately to the principal amount of each month's salary not paid to the applicant during the period from 15 April 2002 to 11 July 2007 (a total of almost sixty-two months), due to the fact that the salary rate for the applicant's position changed several times throughout this period and that there was a different length of delay in payment for each month's salary. However, as noted above, no information was made available to the Court concerning the actual salary rates applicable during the period from April 2005 to July 2007. Therefore, in the absence of this information, the claim does not lend itself to precise calculation.

26. In conclusion, the Court points out that, in assessing the pecuniary damage sustained by the applicant, the Court has, as far as appropriate, considered the estimates provided by the parties. It has also noted that the total amount of salary due to the applicant during the period from 15 April 2002 until her reinstatement was approximately AZN 4,250. Lastly, it has found that the applicant is entitled to certain compensation for the decrease in value of the principal amounts of delayed salary payments, although such compensation cannot be precisely calculated on the basis of the information submitted.

27. Having regard to the above considerations, the Court, making its assessment on an equitable basis, finds that the amount of AZN 5,677.26 awarded to the applicant at the domestic level can be considered as compensation fully covering the pecuniary damage sustained by the applicant during the period after 15 April 2002, including both the principal amount of the delayed salary during this period and compensation for the decrease in value of the delayed salary. Accordingly, the Court rejects any claim by the applicant in excess of that amount and makes no additional award in respect of pecuniary damage.

2. Non-pecuniary damage

28. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government indicated their willingness to accept the applicant's claim for non-pecuniary damage up to a maximum of AZN 4,000.

30. The Court considers that the applicant must have sustained some non-pecuniary damage as a result of the lengthy non-enforcement of the final judgment in her favour. However, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,100 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

31. The applicant claimed EUR 6,623 for the costs and expenses incurred both in the domestic proceedings and before the Court, including legal fees and translation and postal expenses.

32. The Government contested this claim, noting that it was not properly itemised and submitted without all required supporting documents. However, the Government indicated their willingness to accept the applicant's claim up to a maximum of AZN 2,000.

33. The Court reiterates that it will award costs and expenses only if satisfied that these were actually and necessarily incurred and reasonable as to quantum. It notes that the applicant has not fully itemised her claim for costs and expenses and has submitted evidence which supported her claim only partially. Regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,550 covering costs under all heads, less the sum of EUR 850 received in legal aid from the Council of Europe, plus any tax that may be chargeable.

C. Default interest

34. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement:

(i) EUR 3,100 (three thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and

(ii) EUR 1,550 (one thousand five hundred and fifty euros), less EUR 850 (eight hundred and fifty euros) granted by way of legal aid, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President