



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

1959 · 50 · 2009

FIRST SECTION

CASE OF MIRZAYEV v. AZERBAIJAN

(Application no. 50187/06)

JUDGMENT

This version was rectified on 13 January 2010
under Rule 81 of the Rules of the Court

STRASBOURG

3 December 2009

FINAL

03/03/2010

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 Mirzayev v. Azerbaijan,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 50187/06) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Azerbaijani national, Mr Yadigar Mirzayev (“the applicant”), on 14 November 2006.

2. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that the failure to enforce the judgment of 23 December 2003 violated his right to a fair trial and his property rights, as guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. On 19 November 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Baku.

6. By an order of the Azizbeyov District Executive Authority (“ADEA”) of 18 January 1994, the applicant was issued an occupancy voucher (*yaşayış orderi*) to a flat in a recently constructed residential building in Baku.

7. On the same day, the applicant became aware that the flat was occupied by S. and his family, who were internally displaced persons (“IDP”) from Lachin, a region under the occupation of the Armenian military forces following the Armenian-Azerbaijani conflict over Nagorno-Karabakh.

8. According to the applicant, despite his numerous demands, S. refused to vacate the flat, pointing out that he was an IDP and had no other place to reside in.

9. On an unspecified date in 2003, the applicant lodged an action with the Surakhany District Court asking the court to order the eviction of S. and his family from the flat.

10. On 23 December 2003 the Surakhany District Court granted the applicant's claim and ordered that S. and his family be evicted from the flat. The court noted that S. and his family were IDPs who had illegally settled in the flat in 1993. The court held that, pursuant to the occupancy voucher issued to him by the ADEA on 18 January 1994, the applicant was the lawful tenant of the flat and, as such, had a right to demand S. to vacate it. Moreover, the court noted that, in accordance with the domestic law, IDPs could be allowed to temporarily settle of their own will only if this did not infringe the rights and lawful interests of other persons; otherwise, the local executive authorities had to ensure their resettlement in other accommodation. In the present case, since the applicant's property rights had been infringed, the Surakhany District Executive Authority (“SDEA”) was ordered to provide S. and his family with other accommodation.

11. No appeals were filed against this judgment and it entered into legal force. However, S. refused to comply with the judgment and, despite the applicant's complaints to various authorities, it was not enforced.

12. On 22 February 2005 the Department of Judicial Observers and Enforcement Officers of the Ministry of Justice informed the applicant that it was impossible to execute the judgment of 23 December 2003, because the local authorities could not find other accommodation for S. and his family. In such circumstances, the authorities were barred from taking any measures to evict IDPs from their temporary place of residence.

13. On 24 March 2005 the SDEA informed the applicant that, at that time, there were more than 25,000 IDPs temporarily settled in the Surakhany District. These IDPs lived in various flats, hotels, administrative buildings and other premises. For this reason, there was no more available accommodation in the district in which S. and his family could be resettled. Therefore, it was impossible to execute the judgment of 23 December 2003.

14. Following the applicant's repeated complaints, on 5 May 2006 the SDEA again informed the applicant that, due to the continuous lack of any other accommodation where S. and his family could be moved, it was impossible to execute the judgment.

15. At the time of the latest communication with the applicant, the judgment of 23 December 2003 remained unenforced.

II. RELEVANT DOMESTIC LAW

A. Housing Code of 8 July 1982¹

16. 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). A decision on granting an apartment is 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). The right of use of apartments is granted for an indefinite term (Article 10).

B. Law on Privatisation of Housing of 26 January 1993

17. Individuals residing, pursuant to a tenancy agreement, in apartments owned by the State and other public bodies have a right to transfer those 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

18. IDPs are defined as “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” (Article 2). The IDPs 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 resettlement of the internally displaced persons in other accommodation (Article 5).

¹ Rectified on 13 January 2010: the date should read 8 July 1982 instead of 1 March 1983.

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

19. Article 4 of the IDP Settlement Regulations provides as follows:

“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 Resettlement of Internally Displaced Persons in Other Accommodation, adopted by the Cabinet of Ministers Resolution No. 200 of 24 December 1999 (“the IDP Resettlement Regulations”)

20. Article 4 of the IDP Resettlement Regulations provides as follows:

“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.”

F. Order of the President of the Republic of Azerbaijan of 1 July 2004 on Approval of the State Program for Improvement of Living Conditions and Increase of Employment of Refugees and Internally Displaced Persons

21. In the order, *inter alia*, the relevant state organs of the Republic of Azerbaijan are instructed that until the return of the IDPs to their native lands or until their temporary settlement in new houses, the eviction of the IDPs from the public apartments, flats, land and other premises, regardless of their ownership, that they resided in from 1992 to 1998 shall not be allowed.

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

22. Interested persons may lodge an action against a decision and action (omission) of the relevant executive authorities, local self-administration authorities, other authorities and organisations or their officials (Article 296).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

23. The applicant complained of an unjustified delay in the execution of the judgment of 23 December 2003 and a violation of his property rights as a result of non-enforcement of this judgment. Although the applicant did not specifically rely on any Convention provisions, the Court considers that the substance of this complaint must be examined under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. Article 6 reads as follows:

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

Article 1 of Protocol No. 1 reads 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. Admissibility

24. The Government argued that the applicant had failed to exhaust domestic remedies. In particular, the Government alleged that the applicant could have challenged the domestic authorities' failure to enforce the judgment of 23 December 2003 before the domestic courts under the procedure stipulated by Article 296 of the Code of Civil Procedure. However, the applicant failed to make use of this remedy.

25. The applicant disagreed with the Government and maintained his complaints.

26. The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of*

Judgments and Decisions 1996-IV, and *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). The Court further emphasises that the domestic remedies must be “effective” in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

27. The Court notes that the Government failed to provide any explanation as to how a complaint concerning the continued non-enforcement of the judgment of 23 December 2003 lodged with the district court could have put an end to the continued violation or to the kind of redress which the applicant could have been afforded as a result of the complaint. In any event, the Court observes that the applicant did not complain about any unlawful action on the part of the competent authorities but, rather, about the fact that the judgment was not enforced. Even if the applicant had brought a complaint against the State and obtained a decision confirming that the failure to enforce the judgment of 23 December 2003 had been unlawful in domestic terms, such an action would only have produced the same results, the only outcome being confirmation of the judgment's legal force enabling the enforcement officers to proceed with the enforcement of the judgment of 23 December 2003 (see, *mutatis mutandis*, *Tarverdiyev v. Azerbaijan*, no. 33343/03, § 47, 26 July 2007 and *Yavorivskaya v. Russia* (dec.), no. 34687/02, 13 May 2004). Moreover, even assuming that the applicant could have obtained compensation for the past delay, the Government have failed to show that such proceedings would have been speedier than any other “ordinary” civil suit, which could have lasted for years and gone through several levels of jurisdiction, or, indeed, that they could have been capable of expediting the enforcement in question (see, *mutatis mutandis*, *Ilić v. Serbia*, no. 30132/04, § 65, 9 October 2007).

28. In view of the above, the Court concludes that such an action would have been ineffective and finds that the application cannot be rejected for non-exhaustion of domestic remedies. Furthermore, the Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

29. The Government submitted that, due to the high number of IDPs in Azerbaijan as a result of the Armenian-Azerbaijani conflict over Nagorno-Karabakh, the authorities took certain measures in order to resolve the housing problem of the IDPs. The Government further submitted that in the instant case the execution of the judgment was impossible, because there

had not been other accommodation available to the IDPs settled in the flat in question. Moreover, relying on different provisions of the domestic law (cited in the Relevant Domestic Law section above), the Government alleged that IDPs should not be evicted from their place of residence until their return to their native lands or their resettlement in other accommodation. Furthermore, the Government submitted that the solution of the IDPs' housing problem was one of the priorities of the Government's policy and that the relevant measures were being implemented in this respect.

30. The applicant reiterated his complaint, noting that the continued non-enforcement of the judgment of 23 December 2003¹ had infringed his right to a fair trial and his right to peaceful enjoyment of his possessions.

2. The Court's assessment

(a) Article 6 of the Convention

31. At the outset, the Court notes that it has already had an opportunity to examine a case involving illegal occupation of a private flat by IDPs (see *Akimova v. Azerbaijan*, no. 19853/03, 27 September 2007). However, the issues of the present case are different from those in the *Akimova* case. In the instant case, enforcement proceedings were actually instituted by the domestic authorities and the applicant had an enforceable judgment claim, whereas in the *Akimova* case, the execution of the judgment was suspended by the judgment itself (Ibid, §§ 14, 16 and 55).

32. 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 – proceedings that are fair, public and expeditious – 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 would be likely to 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*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

¹ Rectified on 13 January 2010: the date should read 23 December 2003 instead of 31 May 2001.

33. The Court notes 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). The Court also reiterates that State responsibility for enforcement of a judgment against a private party extends no further than the involvement of State bodies in the enforcement procedures. When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Cebotari and Others v. Moldova*, nos. 37763/04, 37712/04, 35247/04, 35178/04 and 34350/04, § 39, 27 January 2009).

34. The Court observes that in the present case, the judgment delivered in favour of the applicant has so far remained unenforced for almost six years, thus preventing the applicant from benefiting from the success of the litigation which concerned his property rights. Moreover, despite the fact that the dispute was between two private parties, the judgment of 23 December 2003 also ordered the executive authorities to provide S. and his family with other accommodation. Therefore, unlike ordinary cases concerning non-enforcement of a judgment between private parties, which necessitate actions by a debtor who is a private person, and where the State has to merely assist a creditor with the execution of a judgment (see, for example, *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005), in this case the execution of the judgment was conditioned by the State's obligation to provide S. and his family with other accommodation (see §§ 10 and 12-13).

35. The Court is prepared to accept that, in the instant case, the high number of IDPs in Azerbaijan created certain difficulties in the execution of the judgment of 23 December 2003. Nevertheless, the judgment remained in force, but for several years no adequate measures were taken by the authorities to comply with it. It has not been shown that the authorities had continuously and diligently attempted to find other accommodation for S. and his family in order to enforce the judgment in question. In such circumstances, the Court considers that no reasonable justification was advanced by the Government for the significant delay in the enforcement of the judgment.

36. By failing to take the necessary measures to comply with the final judgment in the instant case, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect (see *Burdov*, cited above, § 37).

37. There has accordingly been a violation of Article 6 § 1 of the Convention.

(b) Article 1 of Protocol No. 1 to the Convention

38. 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*, 9 December 1994, § 59, Series A no. 301-B).

39. The Court observes that in the present case the applicant did not own the flat in question, but had only tenancy rights to it pursuant to the occupancy voucher issued by the local executive authority. However, the Court has found that a claim to a flat based on such an occupancy voucher constitutes a “possession” falling within the ambit of Article 1 of Protocol No. 1 (see *Akimova*, cited above, §§ 39-41). In the present case, the applicant's tenancy right to the flat was recognised by the judgment of 23 December 2003. Moreover, the judgment ordered the eviction of the IDPs from the flat, thus granting the applicant an enforceable claim to recover the use of the flat in question.

40. The judgment had become final and enforcement proceedings had been instituted, giving the applicant a right to recover the use of the flat. It follows that the impossibility for the applicant to obtain the execution of this judgment constituted an interference with his right to peaceful enjoyment of his possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1. For the reasons set out in § 35 above, the Court finds that no acceptable justification for this interference has been advanced by the Government.

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

II. 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 demanded that the judgment of 23 December 2003 be enforced, but did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

44. However, the Court considers that, in so far as the judgment of 23 December 2003 remains in force, the State's outstanding obligation to enforce it cannot be disputed. Accordingly, the applicant is still entitled to enforcement of that judgment. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been in had

the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). Having regard to the violation found, the Court finds that in the present case this principle applies as well. It therefore considers that the Government must secure, by appropriate means, the enforcement of the judgment of 23 December 2003.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
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 1 of Protocol No. 1 to the Convention;
4. *Holds* that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the domestic court's judgment of 23 December 2003.

Done in English, and notified in writing on 3 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President