



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

1959 · 50 · 2009

FIRST SECTION

CASE OF HUMBATOV v. AZERBAIJAN

(Application no. 13652/06)

JUDGMENT

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 Humbatov 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. 13652/06) 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 Nail Humbatov (“the applicant”), on 23 March 2006.

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 Ç. Asgarov.

3. The applicant alleged, in particular, that the failure to enforce the judgment of 31 May 2001 had 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 13 March 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

5. The applicant was born in 1941 and lives in Baku.

6. The applicant was the sole owner and director of Nail Commercial Firm (“the Company”), established on 2 March 1992 in Baku. It appears from the case file that the Company was registered on 22 January 1993 and, that, according to the company's charter, the applicant was its sole founder.

7. By an order of the Baku City Executive Authority (“the BCEA”) of 7 February 1996, the Company was granted the right of use of a plot of land in Baku for constructing and operating a health centre. On 25 May 1998 the Company was granted an additional plot of land adjacent to the original one. The total area of land granted to the Company comprised 0.75 hectares (“the Plot”).

8. The Company obtained all necessary construction permits and authorisations and paid all relevant fees. However, it did not start any construction work.

9. In 1998 the Plot was occupied by another private company, called Ruslan, which commenced construction of a shopping centre on the Plot.

10. After writing several letters of complaint to the BCEA and the police, the Company brought an action against the Khatai District Executive Authority (“the KDEA”) and Ruslan, asking for protection of its right of use of the Plot. On 29 October 1998 the Economic Court (acting as a first-instance court) rejected the Company's claim. The court found that Ruslan had occupied the Plot illegally. However, the court noted that, due to the fact that a substantial amount of construction had been carried out on the site, it was impracticable to demolish the buildings constructed by Ruslan. Therefore, the court held that the buildings illegally constructed by Ruslan were to be confiscated in favour of the State, while the BCEA was ordered to grant the Company another plot of land of similar value.

11. Following a series of appeals by the Company, on 31 May 2001, the Economic Court (acting as an appeal court) quashed the judgment of 29 October 1998 and granted the Company's claim. The court ordered the demolition of buildings constructed by Ruslan and restoration of the Company's right of use of the Plot. No cassation appeals were lodged against this judgment and it entered into legal force.

12. It appears from the case file that the applicant applied to various authorities complaining that the judgment of 31 May 2001 had not been enforced.

13. On 29 January 2002 the Economic Court issued a special decision (*xüsusi qərar*), instructing the Khatai District Prosecutor's Office to institute criminal proceedings against those responsible for the non-enforcement of the judgment.

14. Upon a request by the Company, on 1 July 2003 the Economic Court issued a special decision interpreting the operative part of the judgment of 31 May 2001. The court clarified that the Plot must be vacated by any third parties, that access to the Plot must be restricted and that the illegally constructed buildings must be demolished by the KDEA. Thereafter, the Plot was to be transferred to the Company.

15. In August 2003 the Khatai District Department of Judicial Observers and Enforcement Officers informed the Economic Court that the

enforcement of the judgment was impossible due to the KDEA officials' refusal to demolish the illegally constructed buildings.

16. On 11 September 2003 the Economic Court issued a special decision instructing the Khatai District Prosecutor's Office to institute criminal proceedings against the relevant KDEA officials. On 17 October 2003 the Khatai District Prosecutor's Office refused to institute criminal proceedings.

17. In the meantime, the KDEA requested the President of the Supreme Court to reopen the proceedings and have the judgment of 31 May 2001 reviewed by the Plenum of the Supreme Court. By a letter of 20 October 2003 the President of the Supreme Court rejected this request, finding no grounds to reopen the proceedings.

18. It appears from the case file that in the meantime the Ministry of Economic Development ("the MED") had issued ownership certificates to third parties in respect of the Plot. On an unspecified date in 2005, the applicant lodged a lawsuit against the MED and those persons asking the court to declare void all the ownership certificates issued in respect of this Plot. On 23 December 2005 the Khatai District Court dismissed the applicant's claim. After a series of appeals by the applicant, on 18 November 2008 the Court of Appeal upheld the first-instance court's judgment. The Court of Appeal noted that, as the Plot had been sold at auction to a third party in 1999 when it belonged to the State pursuant to the judgment of 29 October 1998, the ownership certificates issued by the MED were in accordance with the relevant law. On 10 March 2009 the Supreme Court upheld the Court of Appeal's judgment.

19. At the time of the latest communication with the applicant, the judgment of 31 May 2001 had not been enforced.

THE LAW

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

20. The applicant complained under Article 6 § 1 that the Economic Court's judgment of 31 May 2001 had not been enforced. He also complained that the non-enforcement of the judgment of 31 May 2001 had infringed his right to peaceful enjoyment of his possessions as secured by 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

1. *The applicant's victim status*

21. The Court observes that the applicant was the sole owner and director of the Company. It appears from the applicant's submissions that he had lodged the application solely in his own name and complained about violations of his personal rights as the owner and director of the Company. In this regard, the Court reiterates that the term “victim” in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue (see, for example, *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51). To this effect, the Court notes that the sole owner of a company can claim to be a “victim” within the meaning of Article 34 of the Convention in so far as the impugned measures taken with regard to his or her company are concerned (see *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005). Having regard to the absence of competing interests which could create difficulties, for example, in determining who is entitled to apply to the Court and in the light of the circumstances of the case as a whole, the applicant can, in the Court's opinion, reasonably claim to be a victim within the meaning of Article 34 of the Convention, in so far as the impugned measures taken with regard to his company are concerned (see *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI).

2. *The Court's competence ratione temporis*

22. The Government argued that the complaint was incompatible with the Convention *ratione temporis* because the judgment of 31 May 2001 had been delivered prior to 15 April 2002, the date of the Convention's entry into force in respect of Azerbaijan.

23. The Court reiterates 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 Convention entered into force with respect to Azerbaijan on 15 April 2002. However, the Court notes that in the

light of the authorities' continued failure to execute the judgment, the latter remains still unenforced. Therefore, there is a continuous situation and the Court is therefore competent to examine the part of the application relating to the period after 15 April 2002 (see *Ilić v. Serbia*, no. 30132/04, § 54, 9 October 2007, and *Sladkov v. Russia*, no. 13979/03, § 16, 18 December 2008). The Government's objection must therefore be dismissed.

3. Domestic remedies

24. The Government argued that the applicant had failed to exhaust domestic remedies. In particular, civil proceedings on property rights of third parties in respect of the disputed plot were still pending before the domestic courts at the time of lodging of the present application. However, the Court notes that these civil proceedings did not concern the enforcement of the judgment of 31 May 2001 and cannot be considered a remedy to be exhausted within the meaning of the Convention in this regard. Moreover, in any event, the above-mentioned proceedings were terminated by the Supreme Court's final decision of 10 March 2009. Therefore, the Government's objection is irrelevant to the present complaint and should be dismissed.

4. Conclusion

25. The Court considers that the application 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

26. The Government alleged that the applicant did not have any possessions within the meaning of the Convention and that the disputed plot of land belonged to others. The Government submitted that the applicant did not have any property rights, therefore there was no violation of the applicant's property rights under Article 1 of Protocol No. 1 to the Convention. The Government's submissions were silent on the continued non-enforcement of the judgment of 31 May 2001.

27. The applicant reiterated his complaint, noting that the continued non-enforcement of the judgment of 31 May 2001 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

28. At the outset, 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).

29. The Court further 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 observes that in the present case the continuing non-enforcement of the judgment of 31 May 2001 delivered in favour of the applicant deprived him of benefiting from the success of the litigation which concerned his property rights.

30. The Court notes that, since the date of the Convention's entry into force with respect to Azerbaijan on 15 April 2002, the Economic Court's judgment of 31 May 2001 has remained unenforced for almost seven and a half years. Before 15 April 2002, the judgment had not been enforced for more than ten months. No reasonable justification was advanced by the Government for this delay.

31. 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).

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

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

33. The Court reiterates that a property-related claim can constitute a “possession” 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). The Court notes that, by virtue of the judgment of 31 May 2001, the applicant had an established “legitimate expectation” to obtain the right of use of a specifically identified plot of land (see, *mutatis mutandis*, *Ostapenko v. Ukraine*, no. 17341/02, §§ 44-48, 14 June 2007). The Court is therefore satisfied that the applicant's claim was sufficiently established to constitute a “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention. The impossibility of obtaining execution of the Economic Court's judgment of 31 May 2001 constituted an interference with the applicant's 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 (see *Burdov*, cited above, § 40, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003). The Government have not advanced any acceptable justification for this interference.

34. The foregoing considerations are sufficient to enable the Court to conclude that there has also been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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.”

36. The applicant demanded that the judgment of 31 May 2001 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.

37. However, the Court considers that, in so far as the judgment of 31 May 2001 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 shall secure, by appropriate means, the enforcement of the judgment of 31 May 2001.

38. It appears, however, that the plot of land in question is currently in the ownership of third parties. In this connection, the Court points out that

its judgments are essentially declaratory in nature. In general, it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention (see *Shofman v. Russia*, no. 74826/01, § 53, 24 November 2005, with further references). By finding a violation of Article 6 § 1 in the present case, the Court has established the Government's obligation to take appropriate measures to remedy the applicant's individual situation, that is to ensure compliance with the applicant's enforceable claim under the judgment of 31 May 2001 (compare with *Fadeyeva v. Russia*, no. 55723/00, § 142, ECHR 2005-...). Whether such measures would involve restoring the applicant's right of use of the plot in question or providing him with an equivalent plot or, if this proves impossible, granting him reasonable compensation for non-enforcement, or a combination of these and other measures, is a decision that falls to the respondent State (see, *mutandis mutadis*, *Tarverdiyev v. Azerbaijan*, no. 33343/03, § 66, 26 July 2007). The Court, however, emphasises that any measures adopted must be compatible with the conclusions set out in the Court's judgment (see *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II, with further references).

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 31 May 2001.

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