

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

1959 · 50 · 2009

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 5763/07
by Mubariz YAGUBOV
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 17 September 2009 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 January 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mubariz Yagubov, is an Azerbaijani national who lives in Tovuz, Azerbaijan. He is represented before the Court by Mr B. Hajiyev, a lawyer practising in Baku. The Azerbaijani Government ("the Government") are represented by their Agent, Mr Ç. Asgarov.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant was involved in a property dispute with a private person (S.) over a retail shop located in the Govlar settlement of the Tovuz Region. At the time of the dispute, the shop was in S.'s possession. The applicant claimed to have bought the shop from its previous owners, who had privatised it in 2003, while S. argued that the privatisation process had been unlawful and that he had a lawful claim to the shop.

The applicant lodged a lawsuit seeking S.'s eviction from the shop.

By a judgment of 23 November 2005, the Shamkir District Court found that the applicant had purchased the shop on 6 October 2003 and was its lawful owner pursuant to the ownership certificate issued by the Ministry of Economic Development on 16 January 2004. The court further found that S. had unlawfully occupied the shop without the owner's permission. Accordingly, the court ordered S. to vacate the shop. S. appealed against that judgment.

On 7 April 2006 the Court of Appeal delivered a judgment dismissing S.'s appeal. The Shamkir District Court's judgment of 23 November 2005 thus became final immediately. No further appeals were filed.

According to information submitted by the Government, on 2 May 2006 the Tovuz Department of Enforcement Officers enforced the judgment of 23 November 2005 as upheld by the Court of Appeal and S. was evicted from the shop by the police. By a decision of 4 May 2006, the Tovuz District Court terminated the enforcement proceedings as the judgment of 23 November 2005 had been executed.

It appears from the case file that the same shop was subsequently occupied by three other persons. On 26 September 2007 the Tovuz District Court delivered a judgment ordering their eviction from the shop. That judgment was enforced on 15 February 2008.

According to the applicant, however, the shop was subsequently occupied again, by other persons related to S.

COMPLAINTS

The applicant complained under Article 1 of Protocol No. 1 to the Convention that the Shamkir District Court's judgment of 23 November 2005, as upheld by the Court of Appeal's judgment of 7 April 2006, had not been enforced.

THE LAW

The applicant complained under Article 1 of Protocol No. 1 to the Convention that the authorities had failed to execute the Shamkir District Court's judgment of 23 November 2005, as upheld by the Court of Appeal judgment of 7 April 2006. Although the applicant relied only on Article 1 of Protocol No. 1 to the Convention provisions, the Court considers that the substance of his complaint also falls to be examined under Article 6 of the Convention. Article 6 provides 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 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."

The Government submitted that the Shamkir District Court's judgment of 23 November 2005 had been enforced on 2 May 2006 and that the applicant's allegations were unsubstantiated.

Moreover, the Government noted that the Tovuz District Court's judgment of 26 September 2007, delivered in another dispute concerning the shop, had been also enforced. The Government further argued that if the applicant's shop had been occupied subsequently by unknown persons, he should first have had recourse to the domestic remedies.

Without replying to the Government's specific comments, the applicant disagreed with the Government and maintained his complaints. He alleged that the shop was still occupied by certain persons, who were relatives of S.

The Court notes 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). The Court observes that its only task is to examine whether the measures applied by the authorities in the present case were adequate and sufficient. In cases such as the present one, which necessitate actions by a debtor who is a private person, the State, as the public authority, has to act diligently in

order to assist a creditor in the execution of a judgment (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005).

The Court notes that, in this case, the Government submitted convincing documentary evidence proving that the Shamkir District Court's judgment of 23 November 2005 was enforced on 2 May 2006 and that S. was evicted from the shop by the police. The applicant did not contest this specific fact. The Court points out that the Shamkir District Court's judgment of 23 November 2005 entered into force on 7 April 2006, upon delivery of the Court of Appeal's judgment. Accordingly, the judgment was enforced less than one month after its entry into force.

As to the applicant's new allegation concerning the subsequent occupation of the shop by other persons, the Court notes that the present complaint only concerns the issue of the alleged non-enforcement of the Shamkir District Court's judgment of 23 November 2005, which was executed on 2 May 2006. The applicant submitted no other final judgments ordering the eviction of those persons from the shop.

Having regard to the foregoing considerations, the Court is of the view that the national authorities took the necessary measures in order to execute the judgment of 23 November 2005 and that there was no significant delay in the execution of the judgment.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Nina Vajić
President