



FIFTH SECTION

CASE OF ALIBEYOVA v. AZERBAIJAN

(Application no. 13731/12)

JUDGMENT

STRASBOURG

9 September 2021

This judgment is final but it may be subject to editorial revision.

In the case of Alibeyova v. Azerbaijan,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Stéphanie Mourou-Vikström, *President*,

Jovan Ilievski,

Arnfinn Bårdsen, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 13731/12) 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 Khaver Hamid gizi Alibeyova (*Xavər Həmid qızı Əlibəyova* – “the applicant”), on 17 February 2012;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints concerning Articles 6 and 34 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 8 July 2021,

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

INTRODUCTION

1. The present case concerns a complaint by the applicant about the quashing, based on belated appeals by the opposing parties, of a final and enforceable judgment in her favour in civil proceedings. The applicant invoked Articles 6 and 34 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1940 and lives in Baku. She was represented by Mr I. Aliyev, a lawyer based in Azerbaijan.

3. The Government were represented by their Agent, Mr. Ç. Əsgərov.

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

5. According to the applicant, on 27 February 2009, while walking down the street on her way home, she had tripped over and suffered a severe fracture of her left leg. After leaving hospital, she continued to receive treatment for the injury at home.

6. On 13 April 2010 the applicant brought a civil action for damages in the Sabail District Court against the Baku City Executive Authority (“the BCEA”) and the Azeryolservis Open Joint-Stock Company (“the company”), founded by and at the material time operating under the

Ministry of Transport of the Republic of Azerbaijan. In particular, she argued that on 27 February 2009 she had fallen and suffered severe injuries because the road had not been constructed in accordance with the construction rules by the respondents.

7. On 18 June 2010 the Sabail District Court delivered a judgment partially granting the applicant's claim. It ordered the respondents to pay her 30,000 Azerbaijani manats (AZN) (approximately 30,000 euros (EUR) at the material time) in respect of pecuniary damage and AZN 20,000 (approximately EUR 20,000 at the material time) in respect of non-pecuniary damage. As the defendants had not lodged appeals against that judgment within the procedural time-limit of one month, it became final and enforceable.

8. On 9 and 13 August 2010 respectively, the company and the BCEA lodged separate appeals against the judgment given by the Sabail District Court on 18 June 2010.

9. On 19 August 2010 the Sabail District Court dismissed the defendants' appeals as inadmissible, finding that they had been lodged outside the procedural time-limit and that the defendants had not asked the court for its restoration.

10. On 29 September 2010 the BCEA requested that the Sabail District Court restore the procedural time-limit for lodging an appeal against the judgment of 18 June 2010 and quash its decision of 19 August 2010. The BCEA argued that it had never been officially served with a copy of the judgment in question and had obtained information about it following receipt of the execution officer's letter dated 26 July 2010.

11. On 11 November 2010 the Sabail District Court quashed its decision of 19 August 2010 and declared admissible the appeal by the BCEA against its judgment of 18 June 2010. Having found that the case file did not contain evidence of the actual service upon the BCEA of the copy of the judgment in question, the court restored the time-limit for lodging the appeal.

12. On an unspecified date in November 2010, the applicant appealed against the Sabail District Court's decision of 11 November 2010.

13. On 6 January 2011 the Baku Court of Appeal rejected the applicant's appeal against the Sabail District Court's decision of 11 November 2010 and upheld the decision in question. It appears from the text of the decision and the transcripts of the court hearing held on 6 January 2011 that the applicant and her representative were present at the court hearing. No cassation appeal was lodged by the applicant against the appellate court's decision dated 6 January 2011.

14. On 15 April 2011 the Baku Court of Appeal quashed the Sabail District Court's judgment of 18 June 2010 and dismissed the applicant's claims, finding that she had failed to provide sufficient evidence to establish a causal link between her fall and the defendants' actions.

15. On 10 June 2011 the applicant lodged a cassation appeal against that judgment, complaining about the findings of the lower courts on the merits of her claim. In her cassation appeal, the applicant did not complain about the restoration of the time-limit for lodging an appeal or allege a breach of the principle of legal certainty on account of that restoration.

16. On 11 August 2011 the Supreme Court dismissed the applicant's cassation appeal and upheld the Baku Court of Appeal's judgment of 15 April 2011.

17. On 8 August 2014 the applicant's representative before the Court, Mr I. Aliyev, was arrested on charges of tax evasion, abuse of power and illegal entrepreneurship. On 8 and 9 August 2014 the prosecuting authorities conducted a search of Mr Aliyev's home and office. During the search, a large number of documents, including all the case files relating to applications before the Court that were in Mr Aliyev's possession as representative, were seized by the domestic authorities.

18. By a fax dated 28 August 2014, Mr Aliyev informed the Court of the seizure of the case files, alleging a breach of Article 34 of the Convention in respect of all the applications affected. In letters sent to the Court in September 2014, Mr Aliyev reiterated his complaint about the seizure of the case files.

19. On 25 October 2014 some of the seized documents were returned to Mr J. Javadov, Mr Aliyev's counsel.

RELEVANT LEGAL FRAMEWORK

20. At the material time, the relevant provisions of the Code of Civil Procedure provided as follows:

Article 133. Restoration of procedural time-limits

"133.1. The court shall extend an expired time-limit defined by the law upon a request by a party to the proceedings if it finds that the party has a valid excuse for failure to comply with that time-limit.

...

133.6. The parties to the proceedings shall have a right to appeal against decisions on disputes concerning procedural time-limits."

Article 266. Official service of copies of court decisions upon the parties to the proceedings

"266.1. A court decision delivered in the form of a separate act shall be officially served upon the parties to the proceedings and other interested parties within five days after its delivery.

..."

Article 402. Right to lodge a cassation appeal

“Judgments and decisions of the chambers for civil and economic disputes of the courts of appeal and the chambers for civil and economic disputes of the Supreme Court of the Nakhichevan Autonomous Republic shall be amenable to cassation appeal.”

THE LAW

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

21. The applicant complained that the decisions of the domestic courts setting aside the final and enforceable judgment which had awarded her compensation had infringed the principle of legal certainty under Article 6 § 1 of the Convention and her right to the peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention. The relevant parts of those provisions read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“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 ...”

22. The Government submitted that the complaints were inadmissible on account of non-exhaustion of domestic remedies, as the applicant had failed to bring her grievances before the domestic courts in order to obtain redress for the alleged violation of her rights. There was no evidence that she had lodged a cassation appeal against the Baku Court of Appeal’s decision of 6 January 2011 to uphold the Sabail District Court’s decision on restoration of the procedural time-limit, which had allowed the BCEA to appeal against the judgment of the first-instance court delivered in her favour.

23. The applicant did not comment on this point.

24. The Court reiterates that it may only deal with an issue after all domestic remedies have been exhausted. The purpose of this rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). Thus, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law

and within the prescribed time-limits (see *Micallef v. Malta* [GC], no. 17056/06, § 55, ECHR 2009). However, the rule of exhaustion of domestic remedies requires an applicant to have normal recourse to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014).

25. Furthermore, Article 35 § 1 of the Convention provides for a distribution of the burden of proof. Where the Government claim non-exhaustion of domestic remedies, they must satisfy the Court that the remedy referred to was effective and available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 71, 17 September 2009, and *Nada v. Switzerland* [GC], no. 10593/08, § 141, ECHR 2012). Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact pursued, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances exempting him or her from this requirement (see *Vučković and Others*, cited above, § 77, and the cases cited therein).

26. The Court observes that, at the material time, the domestic law provided for a judicial remedy for disputes concerning the alleged unlawfulness of the restoration of procedural time-limits, and that complaints in that regard could be submitted by lodging appeals and cassation appeals against the impugned decisions of the first-instance courts and appellate courts respectively (see paragraph 20 above). Furthermore, the applicant did not allege that the existing remedies were inadequate or ineffective.

27. In the present case, the Court notes that the applicant disputed before the Baku Court of Appeal the lawfulness of the first-instance court's decision on restoration of the time-limit for lodging an appeal against the judgment previously delivered in her favour (see paragraph 12 above). However, following the delivery of the Baku Court of Appeal's decision of 6 January 2011, she failed to lodge a cassation appeal with the Supreme Court against that decision (see paragraph 13 above). Moreover, the applicant failed to provide any explanation or to substantiate the existence of any specific circumstances which would have exempted her from the obligation to exhaust the available domestic remedies.

28. The Court furthermore does not lose sight of the fact that the applicant also failed, in her cassation appeal relating to the merits of the case, to complain of a violation of the principle of legal certainty on account

of the restoration of the time-limit for lodging an appeal (see paragraph 15 above).

29. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

II. COMPLIANCE WITH ARTICLE 34 OF THE CONVENTION

30. By a fax of 28 August 2014, the applicant's representative lodged a new complaint on her behalf, arguing that the seizure from his office of the entire file relating to her pending case before the Court had amounted to a hindrance to the exercise of the applicant's right of individual petition under Article 34 of the Convention, which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

A. The parties' submissions

31. The Government submitted that the documents, including case files concerning applications pending before the Court, had been seized from the office of the applicant's representative on 9 August 2014, that is, more than four years after the application had been submitted to the Court, and had been returned on 25 October 2014, that is, nearly two years before the applicant's representative had been engaged in submitting observations following the notification of the complaints. Therefore, the applicant could not validly argue that the seizure of her case file might have influenced in any way her communication with the Court at any stage of the proceedings. Moreover, the applicant had failed to provide any substantiation for her complaint or to indicate in which particular way the Government had hindered the effective exercise of the right of individual application.

32. The applicant maintained her complaint.

B. The Court's assessment

33. In *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 64-79, 22 October 2015), having examined an identical complaint based on the same facts, the Court found that the respondent State had failed to comply with its obligations under Article 34 of the Convention. The Court considers that the analysis and finding it made in the *Annagi Hajibeyli* judgment also apply to the present case and sees no reason to deviate from the finding that the deprivation of access for the applicant and her representative to their copy of the case file constituted in itself an undue interference and a serious

hindrance to the effective exercise of the applicant's right of individual application (see also *Akif Hasanov v. Azerbaijan*, no. 7268/10, § 38, 19 September 2019).

34. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

III. 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.”

A. Damage

36. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government submitted that the amount claimed by the applicant was unsubstantiated and excessive. They asked the Court to apply a strict approach in respect of her claim under this head and to reject it.

38. The Court considers that the applicant has suffered non-pecuniary damage as a result of the violation it has found. Having regard to the circumstances of the case, the Court considers that such damage can be compensated for solely by the finding of a violation (see *Akif Hasanov*, cited above, § 43).

B. Costs and expenses

39. The applicant claimed EUR 2,600 in respect of costs and expenses incurred in the proceedings before the Court, including EUR 2,400 for legal assistance and EUR 200 for translation services. She submitted the relevant contracts concluded with her representative and a translator. The applicant also requested that any compensation awarded under that head be paid directly into her representative's bank account.

40. The Government argued that the amounts claimed by the applicant were unsubstantiated and excessive. They asked the Court to apply a strict approach in respect of her claims.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that, in the proceedings before it, the applicant was represented by Mr I. Aliyev, who made identical submissions in a number of other similar applications. Having regard to this fact, as well as to the documents in its possession and the above criteria, the

Court considers it reasonable to award the applicant the sum of EUR 500 covering costs under all heads (see *Akif Hasanov*, cited above, § 46).

C. Default interest

42. The Court considers it appropriate that the default interest rate 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. *Declares* the applicant's complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention inadmissible;
2. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 500 (five hundred euros), plus any tax that may be chargeable to her, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement and to be paid directly into her representative's bank account;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Stéphanie Mourou-Vikström
President