



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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 19853/03
by Valentina AKIMOVA
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 12 January 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 25 April 2003,

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, Mrs Valentina Borisovna Akimova, is an Azerbaijani national who was born in 1950 and lives in Baku. She was represented before the Court by Mrs N. Huseynova, a lawyer practising in Baku. The respondent Government was represented by Mr C. Asgarov, Agent of the Republic of Azerbaijan before the Court.

A. The circumstances of the case

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

On 2 June 1993 the applicant obtained, under the state housing policy, a tenancy authorisation (*yaşayış orderi*) to a three-room apartment in a state-owned residential building in Baku. At that time, the applicant did not move into her new apartment, because the construction of the building had not been fully completed and the tenants had to complete the repair works in their respective apartments at their own expense.

In 1997, pursuant to an oral agreement, the applicant gave the apartment, free of charge, to R., an acquaintance of hers, for temporary use. Under the arrangement reached by the parties, R. was to use the apartment in exchange for certain repair works that he would perform using the materials provided by the applicant. In addition, R. agreed to vacate the apartment whenever the applicant made such a demand.

However, some unspecified time later, in breach of the existing oral agreement, R. allowed his relative H. and his family (hereinafter to be collectively referred to as “H.”) to move into and live in the apartment. H. were internally displaced persons (“IDP”)¹ from Agdam, a region of Azerbaijan under Armenian military occupation.

When the applicant found out that her apartment was occupied by people unknown to her, she requested that they vacate it. However, H. refused to do so, stating that they had no other place to live. The applicant filed a lawsuit, requesting the court to evict H. from the apartment.

On 29 March 2000 the Nizami District Court upheld the applicant’s request. The court held that the applicant, as the lawful tenant, had a right to demand H. to vacate the apartment. The court ordered H.’s eviction from the apartment. H. appealed.

On 30 September 2002 the Court of Appeal quashed the district court’s judgment. The court held that the documents certifying the applicant’s tenancy rights to the apartment, issued in 1993, were invalid and, therefore, the applicant did not have a valid claim to the apartment. The court therefore quashed the first-instance court’s order to evict H. from the apartment.

The applicant filed an appeal in cassation. On 13 December 2002 the Supreme Court reversed the Court of Appeal’s judgment and partially upheld the applicant’s request.

The Supreme Court found that the Court of Appeal erred in judging on the validity of the applicant’s tenancy authorisation. It held that the applicant’s tenancy rights were undisputed by the parties and that the

¹ Azerbaijani law makes a distinction between “refugees” who come from foreign countries, and “internally displaced persons” who come from Azerbaijani territories occupied by foreign forces.

proceedings only concerned H.'s right to remain in the applicant's apartment. The Supreme Court quashed the Court of Appeal's decision in this part.

The Supreme Court further ruled that H. must vacate the applicant's apartment. However, taking into account the fact that H. could not return to their permanent place of residence in Agdam and, in the meantime, had no other place to live, the Court held that the execution of its decision must be suspended until Agdam was liberated from occupation. In essence, the Court allowed H. to remain in the applicant's apartment until they could return to Agdam.

Thereafter, based on the applicant's "additional cassation" complaint, the proceedings were reopened and on 27 January 2005 the Plenum of the Supreme Court quashed the Supreme Court's decision of 13 December 2002. The Plenum noted that, having found errors in the Court of Appeal's judgment, the Supreme Court had no competence under the civil procedure law to deliver a new judgment on the merits and, instead, was obliged to quash the Court of Appeal's judgment and refer the case for re-examination by the Court of Appeal. Accordingly, the Plenum found that, although the conclusions reached by the Supreme Court were essentially correct, it had breached the procedural rules by delivering a new judgment on the merits. The Plenum remitted the case to the Court of Appeal.

On 7 April 2005 the Court of Appeal delivered a judgment identical to the Supreme Court's decision of 13 December 2002. It ruled that H. must vacate the applicant's apartment. However, it held that the execution of the judgment must be suspended until Agdam was liberated from military occupation.

At present, Agdam is still under occupation and H. continue to live in the applicant's apartment. Throughout all of this time, the applicant and her family appear to have lived at their relatives' place.

B. Relevant domestic law

1. Law "On Social Protection of Internally Displaced Persons and Individuals Equated to Them" of 21 May 1999

Article 2. Internally displaced persons and individuals equated to them

"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, shall be considered as internally displaced persons subject to the provisions of this Law."

Article 5. Procurement of internally displaced persons with housing

“The relevant executive authority [the Cabinet of Ministers, State Committee on the Refugees’ Affairs and local executive authorities, within the scope of their respective competence] shall deal with the housing of internally displaced persons. Residential, administrative and auxiliary buildings, as well as other buildings, shall be used for such housing purposes. Where there is no possibility to house internally displaced persons in such buildings or where the density of population in a specific settlement does not allow such a possibility, they shall be settled in camps specially set up for internally displaced persons. ...

The internally displaced persons 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 re-settlement of the internally displaced persons to other accommodation ...”

2. *“Regulations on Settlement of Internally Displaced Persons in Residential, Administrative and Other Buildings Fit for Residence,” adopted by the Cabinet of Ministers Order No. 200, dated 24 December 1999*

“4. In order to prevent the eviction of the internally displaced persons from dwellings where they settled in the period of 1992-1994, the legal force of the tenancy authorisations issued by the relevant authorities to individual citizens in respect of those dwellings shall be suspended ...”

3. *“Regulations on Re-settlement of Internally Displaced Persons to Other Accommodation,” adopted by the Cabinet of Ministers Order No. 200, dated 24 December 1999*

“4. If the temporary settling of internally displaced persons violates the housing rights of other individuals, they must be provided with other suitable accommodation ...”

4. *Code of Civil Procedure of 1 September 2000*

Article 231 provides that the judge examining a civil case may, upon a petition by a party to the case, decide to postpone or suspend the execution of the judgment or change the manner of execution, due to the parties’ financial situation or other circumstances.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that her right to a fair trial had been violated, because she had not received a reasoned decision from the domestic courts. She alleged that the judgment,

as far as H.'s right to remain in the apartment was concerned, lacked justification and was arbitrary. She argued that the courts had failed to rely upon any legal norm that would support the order to stay the execution of the judgment until Agdam was liberated. Moreover, she claimed that the suspension of execution of the binding judgment until an unspecified date had rendered her right to a fair trial illusory.

2. Moreover, the applicant claimed that there was no provision in the Azerbaijani law that would allow the courts to deprive, even temporarily, a person of his or her possessions in the interests of refugees or internally displaced persons. In essence, this complaint appears to fall within the ambit of Article 1 of Protocol No. 1 to the Convention.

3. The applicant further complained that, because her apartment was occupied by other persons, she had been unable to live together with her family members in her home. Therefore, for several years, she and her family members were forced to live in homes of their relatives. Consequently, her right to respect for her home was violated. In making this complaint, the applicant appeared to rely on Article 8 of the Convention.

THE LAW

1. The applicant complained under Article 6 § 1 of the Convention that the domestic courts had failed to give a reasoned decision with respect to the suspension of execution of the judgment in her favour. Article 6 § 1 of the Convention provides as follows:

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

The Government submitted that the decision to suspend the execution of the judgment had been duly justified and reasoned because the court relied on the relevant legal provisions, including the *Regulations on Settlement of Internally Displaced Persons in Residential, Administrative and Other Buildings Fit for Residence*, adopted by the Cabinet of Ministers Order No. 200, dated 24 December 1999 (hereinafter the “IDP Settlement Regulations”), which had authorised the suspension of eviction of internally displaced persons from places of their temporary residence.

The applicant disagreed, noting that the IDP Settlement Regulations had been referred to only in the quashed judgment of the Court of Appeal of 30 September 2002 and, even then, in a different context. However, the relevant judgment of the Court of Appeal of 7 April 2005, suspending the execution of the order to evict H., did not contain such a reference. Moreover, as concerns the order to suspend the execution of the judgment, the court did not rely on, and did not refer to, any domestic legal provision at all. The applicant further submitted that, in any event, the IDP Settlement

Regulations were irrelevant to her case, because they did not empower the domestic courts to suspend execution of their own judgments.

Furthermore, the applicant claimed that the suspension of execution of the final judgment until an unspecified date had been, in itself, incompatible with the Convention, because it rendered her right to a fair trial illusory by allowing the binding judgment to remain inoperative to her detriment.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complained that she had been deprived of her property rights in breach of the requirements of Article 1 of Protocol No. 1 to the Convention, which 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 acknowledged that there had been an interference with the applicant's property rights, but contended that such interference was justified under Article 1 of Protocol No. 1 to the Convention. The Government noted that there were more than 700,000 internally displaced persons in Azerbaijan from the areas under Armenian occupation. There existed a strong public necessity of providing the IDPs with housing. The majority of these IDPs were placed in former administrative buildings, public buildings (such as hotels, nursing homes, etc.) and refugee camps. A certain number of IDPs settled in apartments belonging to private individuals. According to the Government, eviction of IDPs from their temporary places of residence would, in effect, leave them homeless and could “lead to social tensions and explosion” and “endanger the public order.” Therefore, the temporary restriction of the applicant's right to enjoy her possessions had a legitimate aim of public interest and was proportionate to this aim.

The applicant submitted that the interference with the peaceful enjoyment of her possessions was not prescribed by the domestic law. The applicant reiterated that the IDP Settlement Regulations concerned the prevention of eviction of the IDPs who had settled in places of their temporary residence in the period of 1992-1994. However, in her case, the

IDPs settled in her apartment in 1997 and, therefore, were not entitled to the protection under the IDP Settlement Regulations. Moreover, the applicant claimed that these Regulations were in any event irrelevant, since they did not provide any basis for suspension of execution of court judgments, but simply provided for a procedure of suspension of the legal force of tenancy authorisations to residential premises occupied by IDPs in 1992-1994.

In any event, the applicant argued that, even assuming that her property rights had been restricted in accordance with the law and in pursuit of a legitimate aim, the courts had failed to strike a fair balance between the general public interest and the requirements of the protection of an individual's fundamental rights. The applicant contended that she had been forced to bear "an individual and excessive burden," by having her property rights restricted in the IDPs' interests without any compensation. Accordingly, the means employed by the courts were not proportionate to the aim pursued.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant complained under Article 8 of the Convention that her right to respect for her home had been breached, because the domestic courts had allowed the IDPs to continue occupying her apartment. Article 8 of the Convention provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Government submitted that the disputed apartment cannot be regarded as the applicant's "home" within the meaning of Article 8 of the Convention because, despite having acquired the tenancy authorisation, she had never lived in this apartment. Moreover, she did not even intend to move into this apartment before September 1999, when she lodged a lawsuit asking for the IDPs' eviction.

The applicant disagreed. Relying on *Gillow v. the United Kingdom* (judgment of 24 November 1986, Series A no. 109, §§ 44, 46), she argued that "home" could include a place where one intended to live, not confining this definition to a place where one was actually living. The applicant noted

that the disputed apartment had been allocated to her under the state housing policy, according to which state-owned apartments were provided only to individuals who did not have their own “permanent residence where they could establish their home.” However, at the time the tenancy authorisation was granted to her, the apartment was not quite suitable to live in and needed some repair work. She intended to move into the apartment upon the completion of this repair work.

The Court recalls that Article 8 of the Convention only protects a person’s right to respect for his present home (see e.g. *Strunjak and Others v. Croatia* (dec.), no. 46934/99, ECHR 2000-X). The Court recalls further that an individual must show sufficient and continuing links with a place in order that he can establish that it is his “home” for the purposes of Article 8 (see *O’Rourke v. the United Kingdom* (dec.), no. 39022/97, 26 June 2001; *Gillow*, cited above, § 46).

The Court considers that the applicant’s mere intention to move into the apartment in the future, without any other significant links to the apartment in question, is not a sufficient basis to hold that the apartment was her “home” within the meaning of Article 8 of the Convention. In particular, the Court recalls that in the *Gillow* case the applicants took occupation of their house in 1958, resided there for two years before leaving to work abroad and kept their furniture in the house during their absence. While abroad, they expressed their intention to resume living in the house upon their return to the U.K. Subsequently, they re-occupied the house upon their return in 1979 and lived there for several months prior to the interference with their rights under Article 8 of the Convention (see *Gillow*, cited above, §§ 10, 11, 15, 46 and 47). The Court found in that case that the applicants had duly established their “home” in the house in question and had subsequently retained sufficient continuing links with it (see *Gillow*, cited above, § 46).

However, contrary to the facts in the *Gillow* case, in the present case the applicant never took occupation of the apartment, never lived there for any period of time and has not moved her belongings there. In fact, it was H. who had established their home in the applicant’s apartment, albeit allegedly without a lawful right to do so. Moreover, it appears that the applicant herself had already established her “home” in the place where she lived with her relatives. The Court, therefore, finds that the apartment in question cannot be considered as the applicant’s “home” within the meaning of Article 8 of the Convention, because she had never resided there, had no sufficient links with the place, and appears to have established a home elsewhere.

It follows that this complaint is 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 admissible, without prejudging the merits, the applicant's complaints concerning the right to a fair trial and the right to the peaceful enjoyment of her possessions;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President