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FIRST SECTION

CASE OF NASIBOVA v. AZERBAIJAN

(Application no. 4307/04)

JUDGMENT

STRASBOURG

18 October 2007

FINAL

18/01/2008

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 Nasibova **v.** Azerbaijan**,**

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

Mr C.L. Rozakis, *President*,
Mr L. Loucaides,
Mrs N. Vajić,
Mr K. Hajiyev,
Mr D. Spielmann,
Mr S.E. Jebens,
Mr G. Malinverni, *judges*,
and Mr S. Nielsen, *Section Registrar*,

Having deliberated in private on 27 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 4307/04) 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, Mrs Sheyda Khalil qizi **Nasibova** (*Şeyda Xəlil qızı Nəsibova* – "the applicant"), on 19 December 2003.

2. The applicant was represented by Mr I. Aliyev and Mrs G. Guliyeva, lawyers practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr C. Asgarov.

3. The applicant alleged that the significant delays in the state registration of the public association of which she was a founder amounted to a violation of her right to freedom of association, that the domestic proceedings were unfair, that the domestic courts were not independent and impartial, and that the domestic remedies were not effective in lawsuits filed by public associations against the Ministry of Justice of **Azerbaijan**.

4. On 7 February 2006 the President of the Chamber decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Baku.

6. The applicant was a co-founder and director of a public association named "The Journalist Inquiry Centre" (*"Jurnalist Araşdırmaları Mərkəzi" İctimai Birliyi*), established on 15 July 2001. This was a non-profit organisation aimed at promoting the profession of a journalist and freedom of mass media in **Azerbaijan**.

7. On 12 September 2001 the association's founders filed a request for its state registration with the Ministry of Justice (hereinafter also referred to as the "Ministry"), the government authority responsible for the state registration of legal entities. In accordance with the domestic law, a non-governmental organisation acquired the status of a legal entity only upon its state registration by the Ministry.

8. According to the Government, by a letter of 11 October 2001 the Head of the Department for State Registration of Legal Entities of the Ministry of Justice replied to the applicant that the association's charter contained a number of deficiencies and requested the founders to revise the charter accordingly (the Government submitted a copy of this letter). According to the applicant, the founders did not receive such a letter and, in fact, did not receive any formal reply from the Ministry for more than one year and four months.

9. In the meantime, the founders made certain amendments to the association's charter. On 12 September 2002 they re-submitted their registration request together with the new version of the association's charter. In the cover letter for this request, the applicant noted that the founders had made an original request one year earlier but, despite two follow-up letters of 25 September and 2 November 2001 and a meeting with the Ministry official, they had not received any formal reply from the Ministry.

10. In January 2003 the applicant filed a lawsuit against the Ministry with the Yasamal District Court, complaining of the Ministry's failure to take any action within the ten-day time-limit specified by law.

11. While the examination of the lawsuit was pending, on 27 January 2003 the Ministry returned the registration documents to the applicant "without taking any action", i.e. without issuing a state registration certificate or an official refusal to register the association. In the cover letter, the Ministry noted that the association's charter did not comply with Articles 3.1 and 10.3 of the Law on Non-Governmental Organisations. Specifically, the charter did not provide for the internal procedure to challenge a decision to terminate membership in the association. Moreover, the official name of the association allegedly did not mention its organisational legal form. It appears that the Ministry's letter of 27 January 2003 referred to the deficiencies in the association's original charter, although these deficiencies had already been rectified in the revised version of the charter submitted to the Ministry on 12 September 2002.

12. On 10 February 2003 the Yasamal District Court dismissed the applicant's claim, finding nothing unlawful in the actions of the Ministry. The court found that the association's charter had not been drafted in accordance with the requirements of the Law on Non-Governmental Organisations and, therefore, the Ministry's refusal to register the association had been lawful.

13. The applicant appealed. On 24 June 2003 the Court of Appeal upheld the first instance court's judgment. On 16 October 2003 the Supreme Court upheld the Court of Appeal's decision.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Republic of Azerbaijan of 12 November 1995

Article 58. Right to association

"I. Everyone has a right to freedom of association with others.

II. Everyone has the right to form any association, including political parties, trade unions or other public associations, or join existing associations. Free functioning of all associations shall be guaranteed. ..."

B. Civil Code of the Republic of Azerbaijan of 2000

Article 47. Charter of a legal entity

"47.1. The charter of a legal entity approved by its founders is the legal entity's foundation document. ...

47.2. The charter of a legal entity shall define the name, address, procedure for management of activities and procedure for liquidation of the legal entity. The charter of a non-commercial legal entity shall define the object and purpose of its activities. ..."

Article 48. State registration of legal entities

"48.1. A legal entity shall be subject to state registration by the relevant executive authority. ...

48.2. A violation of the procedure of a legal entity's establishment or non-compliance of its charter with Article 47 of the present Code shall be the grounds for refusal to register the legal entity. ..."

C. Law on State Registration of Legal Entities of 6 February 1996

Article 9. Review of the application [for state registration]

"Upon receipt of an application for state registration from a legal entity or a branch or representative office of a foreign legal entity, the authority responsible for state registration shall:

– accept the documents for review;

– within ten days, issue to the applicant a state registration certificate or a written notification of the refusal to register; or

– review the documents resubmitted after rectification of the breaches previously existing therein and, within five days, take a decision on state registration."

D. Law on Non-Governmental Organisations (Public Associations and Funds) of 13 June 2000

Article 3. Name and location of a non-governmental organisation

"3.1. The name of a non-governmental organisation must mention its organisational legal form and nature of its activity. ..."

Article 10. Members of public associations

"10.3. The issue of acquiring and termination of membership in a public association shall be determined by its charter. Charter of a public association shall guarantee the right to lodge a complaint, within the association and in court, regarding termination of membership. ..."

Article 16. State registration of non-governmental organisations

"16.1. The state registration of non-governmental organisations shall be carried out by the relevant executive authority in accordance with the laws of the Republic of **Azerbaijan** on state registration of legal entities.

16.2. Non-governmental organisations shall acquire the status of a legal entity only after passing the state registration."

Article 17. Refusal of state registration

"17.1. Non-governmental organisations can be refused registration only if there is another organisation existing under the same name, or if the documents submitted for registration contradict the Constitution of the Republic of **Azerbaijan**, this law and other laws of the Republic of **Azerbaijan**, or contain false information.

17.2. Decision on refusal of state registration shall be presented in writing to the representative of the non-governmental organisation, with indication of the grounds for refusal as well as the provisions and articles of the legislation breached upon preparation of the foundation documents.

17.3. Refusal of registration shall not prevent the organisation from re-submitting its registration documents after rectification of the breaches.

17.4. The decision on refusal of state registration may be challenged in court."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

14. The applicant complained that the failure by the Ministry of Justice to register the public association in a timely manner constituted an interference with her freedom of association. As the Ministry evaded registering the organisation by significantly delaying the examination of the founders' registration requests and breaching the statutory time-limit for the official response, her association could not acquire legal status. This allegedly constituted a violation of her right to freedom of association, as provided in Article 11 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

1. Compatibility ratione temporis

15. The Court observes that part of the events giving rise to the applicant's complaint relate to the period before 15 April 2002, the date of the Convention's entry into force with respect to **Azerbaijan**. The Court notes 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).

16. Accordingly, the Court's competence is limited to the part of the complaint relating to the events that occurred after 15 April 2002, whereas the events that occurred prior to that date fall outside of its competence *ratione temporis*. Nevertheless, where necessary, the Court shall take into account the state of affairs as it existed at the beginning of the period under consideration.

2. Domestic remedies

17. The Government submitted that the applicant had not exhausted the domestic remedies because, in her submissions to the domestic courts, she had not specifically complained about a violation of her right to freedom of association under Article 11 of the Convention.

18. The applicant disagreed and noted that she had explicitly referred to Article 11 of the Convention in her appeals.

19. Having regard to the subject matter of the domestic proceedings, the Court finds that the applicant's lawsuit against the Ministry of Justice, where she complained about the unlawfulness of the delay in state registration of the public association of which she was a founder, amounted in its substance to a complaint about an alleged violation of her right to freedom of association.

20. Accordingly, the Court rejects the Government's objection as to exhaustion of domestic remedies.

3. Conclusion

21. Having regard to the above conclusions, the Court further notes that the complaint is not inadmissible on any other grounds and that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be declared admissible in the part relating to the events that took place after 15 April 2002.

B. Merits

1. The parties' submissions

22. The Government argued that the Ministry had responded to the founders' first registration request of 12 September 2001 by a letter of 11 October 2001, and to the second registration request of 12 September 2002 by a letter of 27 January 2003.

23. The Government further submitted that there was no interference with the applicant's freedom of association. The Government noted that the Ministry had not refused to register the association. Instead, it merely returned the association's foundation documents to the founders so that the latter could rectify the deficiencies and ensure that they complied with the requirements of the domestic law.

24. Finally, the Government argued that the lack of the status of a legal entity did not prevent the association from continuing its activities because “the state registration of a non-governmental organisation [was] not a mandatory pre-requisite for its functioning”.

25. The applicant disagreed with the Government's contention that the Ministry had replied to the first registration request on 11 October 2001. She claimed that the Ministry replied formally to her for the first time only on 27 January 2003.

26. The applicant further argued that the delay in responding to the founders' registration requests, which was significantly beyond the time-limits set by the domestic law, constituted an interference with, and a violation of, her right to freedom of association. The applicant maintained that such delay was in breach of the domestic law.

27. The applicant also noted that, without acquiring the status of a legal entity through the state registration, the association was unable to function properly and to engage in its primary activities. In particular, she claimed that an unregistered non-governmental organisation could not maintain a bank account, obtain financing, benefit from tax abatements, carry out financial operations, etc.

2. The Court's assessment

28. The Court has found previously that the failure by the Ministry of Justice to reply, within the statutory time-limits, to requests for state registration of a public association amounted to a *de facto* refusal to register the association. Lacking the status of a legal entity, the association's legal capacity was not identical to that of state-registered non-governmental organisations. The significant delays in the registration procedure, if attributable to the Ministry of Justice, amounted to an interference with the right of the association's founders to freedom of association (see *Ramazanova and Others v. **Azerbaijan***, no. 44363/02, §§ 54-60, 1 February 2007, with further references). Accordingly, in the present case, where the applicant was one of the founders of the public association, there has been an interference with the exercise of her right to freedom of association.

29. Such interference will not be justified under the terms of Article 11 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims set out in paragraph 2 of that Article and was "necessary in a democratic society" for the achievement of that aim or aims (see, for example, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 104, ECHR 1999-III).

30. The Court is aware of the fact that, since the time of the events giving rise to the present complaint, certain amendments have been made to the Azerbaijani legislation on state registration of legal entities. However, for the purposes of this complaint, the Court will have regard to the domestic law as it was applicable at the relevant time.

31. The Court observes that Article 9 of the Law on State Registration of Legal Entities of 6 February 1996 set a ten-day time-limit for the Ministry to issue a decision on the state registration of a legal entity or refusal to register it. Where the legal entity's foundation documents contained rectifiable deficiencies, the Ministry could return the documents to the founders within the same ten-day time-limit with instructions for their rectification. After the registration request was re-submitted following such rectification, the law provided for a five-day time-limit for official response.

32. The Court considers that the Government failed to present reliable evidence to support their contention that the Ministry had replied to the founders' first registration request on 11 October 2001. In particular, the Government submitted a copy of the letter which was allegedly sent to the founders on 11 October 2001 (see paragraph 8 above). However, contrary to the usual practice, this letter does not feature the Ministry's official letterhead, is not dated, and does not contain a reference number. There is no evidence showing that this letter has ever been sent to, and received by, the applicant or any of the other founders. In such circumstances, the Court concludes that the first formal response to the founders' registration request of 12 September 2001 was issued only on 27 January 2003. Accordingly, there was a delay of more than one year and four months. More than nine months of this delay fell within the period after 15 April 2002, the date of the Convention's entry into force with respect to **Azerbaijan**. The Court therefore concludes that the Ministry seriously breached the statutory ten-day time-limit.

33. In any event, following the founders' second registration request of 12 September 2002, it still took the Ministry more than four months to issue a formal reply, which was also in breach of the statutory ten-day time-limit.

34. The Court also reiterates its finding that the Law on State Registration of Legal Entities of 6 February 1996 did not afford sufficient protection against delays in the state registration procedure caused by the Ministry's failure to respond to registration requests within the statutory time-limits (see *Ramazanova and Others*, cited above, § 66).

35. Having found that the Ministry of Justice breached the statutory time-limit for issuing the formal response to the state registration requests and that the domestic law did not afford sufficient protection against such delays, the Court concludes that the interference was not "prescribed by law" within the meaning of Article 11 § 2 of the Convention.

36. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 11 § 2 (legitimate aim and necessity of the interference) have been complied with.

37. There has accordingly been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE RIGHT TO A FAIR TRIAL

38. The applicant complained that the domestic courts had not taken into consideration the evidence proving the unlawfulness of the Ministry's refusal to register the association and had failed to properly examine the complaint concerning the Ministry's breach of statutory time-limits for an official response to the state registration request. She relied on Article 6 of the Convention, which provides as follows:

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

39. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

40. However, the Court considers that the applicant's present complaint and arguments are essentially the same as those examined above under Article 11. Therefore, having regard to the conclusions set out in paragraph 35 above, the Court does not consider it necessary to examine separately the present complaint under Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION IN RESPECT OF INDEPENDENCE AND IMPARTIALITY OF DOMESTIC COURTS

41. The applicant also complained that, contrary to Article 6 § 1 of the Convention, the domestic courts had not been independent and impartial. She noted that, in accordance with the law applicable at the time of the events in question, the selection of candidates to judicial positions in **Azerbaijan** was performed by the Judicial Legal Council under the President of the Republic of **Azerbaijan**, presided over by the Minister of Justice. The applicant alleged that, in such circumstances, the judges of the domestic courts could not be independent and impartial in the proceedings against the Ministry of Justice, because their subsequent re-appointment to the courts would depend on the discretion of the Minister of Justice as the Chairman of the Judicial Legal Council. Furthermore, in conjunction with Article 6 § 1, the applicant complained under Article 13 of the Convention that the domestic courts could not be considered as an effective remedy because they had never ruled against the Ministry of Justice in cases concerning the delays in registration of non-governmental organisations.

42. The Court notes that these complaints are essentially the same as those raised before the Court in the case of *Asadov and Others v.* ***Azerbaijan*** ((dec.), no. 138/03, 12 January 2006). In that case, the Court found that the complaints were manifestly ill-founded. In the absence of any substantially new arguments or evidence submitted in the present case, the Court does not find any reason to deviate from its reasoning in the *Asadov and Others* case.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 11,400 euros (EUR) in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage.

46. The Government did not comment.

47. The Court observes that the applicant did not submit any evidence supporting her claim for pecuniary damage or any basis for calculation of the amount claimed. In such circumstances, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

48. As to non-pecuniary damage, the arbitrary delay in the state registration procedure must have been frustrating for the applicant as the co-founder of the public association. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the

Court awards the applicant EUR 1,000 in respect of moral damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

49. The applicant also claimed a total of EUR 2,610 for costs and expenses, including EUR 500 for translation expenses, EUR 110 for postal expenses, EUR 1,000 for costs incurred before the domestic courts and EUR 1,000 for those incurred before the Court. She did not submit any documentary proof of the translation and postal expenses. In support of her claim for the costs incurred in the domestic courts and before the Court, she submitted a copy of the contract for legal services concluded with her representative.

50. The Government did not comment.

51. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable on this amount.

C. Default interest

52. The Court considers it appropriate that the default interest 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 complaints concerning the applicant's right to freedom of association and right to a fair trial admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) in respect of costs and expenses, both amounts to be converted into the national currency at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 October 2007 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Christos Rozakis
Registrar President

NASIBOVA v. AZERBAIJAN JUDGMENT