



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

FIRST SECTION

CASE OF SAHIBOV v. AZERBAIJAN

(Application no. 43152/10)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Quashing of a final and enforceable first-instance judgment • Breach of legal certainty principle • Higher courts' decisions lacking adequate reasoning • Applicant not duly informed of appellate court's hearing and thus not able to attend or participate

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 April 2025

FINAL

10/07/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Sahibov v. Azerbaijan,

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

Ivana Jelić, *President*,

Erik Wennerström,

Alena Poláčeková,

Lətif Hüseynov,

Gilberto Felici,

Raffaele Sabato,

Krzysztof Wojtyczek, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 43152/10) 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 Kamran Isgandar oglu Sahibov (*Kamran İsgəndər oğlu Sahibov*) (“the applicant”), on 22 July 2010;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints concerning Article 6 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 25 March 2024 and 18 March 2025,

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

INTRODUCTION

1. The present application concerns the quashing of a judgment of a first-instance court, which had become final and enforceable, after a considerable lapse of time. The applicant complained that his right to a fair hearing under Article 6 of the Convention had been breached because the decisions of the higher courts had been unlawful and unreasoned and in breach of the principle of legal certainty. The applicant also complained that he had not been informed about the hearing in the appellate court.

THE FACTS

2. The applicant was born in 1963 and lives in Baku. He was represented by Mr R. Mustafazade and Mr A. Mustafayev, lawyers practising 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.

I. LEASE OF STATE-OWNED PROPERTY

5. On 2 February 1999 the applicant and the State Property Ministry (*Dövlət Əmlak Nazirliyi*) signed a contract under which the applicant took lease of commercial premises located in Baku measuring 159 sq. m (hereinafter “the premises”) from the State Property Ministry.

6. The premises in question constituted State-owned property which had been “allocated” (*balansında olan*) to the Azerbaijan State Caspian Sea Shipping Company (*Azərbaycan Dövlət Xəzər Dəniz Gəmiçiliyi*, hereinafter “the State Shipping Company”).

7. During the period relevant to the present case, the State Property Ministry was succeeded consecutively by the Ministry for Economic Development (*İqtisadi İnkişaf Nazirliyi*), the State Committee on Management of State Property (*Dövlət Əmlakının İdarə Edilməsi Üzrə Dövlət Komitəsi*), and the State Committee on Property Issues (*Əmlak Məsələləri Dövlət Komitəsi*) (hereinafter all referred to as “the Ministry”) in its role of a State body with the right to manage or dispose of all State-owned property, including the above-mentioned premises (see paragraph 41 below).

8. On 19 May 2000 the applicant and the Ministry renewed the lease contract for the premises.

9. The lease contract said, *inter alia*, that the applicant had to pay the rent regularly and that 30% of the monthly payment had to be made into an account at the Main State Treasury (*Baş Dövlət Xəzinədarlıq İdarəsi*) – that is, directly to the State – and 70% into a bank account of the State Shipping Company (see paragraph 40 below). If the lessee did not pay the rent for three months, the contract could be terminated.

10. The end date of the contract was 1 December 2000. However, it appears that the lease was tacitly treated as remaining valid beyond that date.

11. The applicant was using the premises for his business activities.

II. PROCEEDINGS BEFORE THE FIRST-INSTANCE COURT

12. In December 2002 the State Shipping Company had occupied the premises and evicted the applicant. When he complained about that to the Ministry, he learned that the Ministry had first leased and then sold some 25 sq. m of the premises to a third person, S.M., by contracts dated 7 November 2002 and 12 December 2002 respectively.

13. On an unspecified date in 2002 the applicant stopped paying the rent.

14. On 2 May 2003 the Ministry addressed a letter to the applicant warning him about his failure to pay the rent.

15. At an unspecified time in 2004 the Ministry lodged a civil action against the applicant, seeking termination of the lease contract dated 19 May 2000, payment of arrears of rent (the Ministry claimed 18,588,219 old Azerbaijani manats (AZM)) and the applicant’s eviction from the premises.

The applicant counterclaimed, asking for the lease contract to be extended and for the Ministry to be ordered to deliver up possession of the premises to the applicant. The applicant also emphasised that he would pay part of the arrears after the premises were handed over to him.

16. On 29 March 2004 the Local Economic Court no. 1 partially granted the Ministry's claim and the applicant's counterclaim.

17. The first-instance court ordered the applicant to pay part of the arrears claimed (namely AZM 8,799,696). In doing so the court took into account the fact that 25 sq. m of the original 159 sq. m premises had been sold to a third person (see paragraph 12 above).

18. The first-instance court also extended the applicant's lease in respect of the remaining 134 sq. m and ordered the Ministry to deliver possession of those premises up to the applicant. In doing so the first-instance court took into account the fact that the applicant had had no access to the premises. The court also referred to, *inter alia*, Presidential decree no. 629 (which made the Ministry the sole authority with the right to lease immovable property on behalf of the State and referred to the Ministry as the authority with the right to manage or dispose of all State-owned property), Article 13, paragraph 4 of the Law on Rent (under which a lessee had the right to renew a lease contract on its expiry) and Article 676.0.3 of the Civil Code (under which a lessor of a property had to make it available to the lessee free from any obstruction as to its use) (see paragraphs 40 and 42-43 below). The remainder of the claim and counterclaim was dismissed.

III. ENFORCEMENT OF THE JUDGMENT OF 29 MARCH 2004

A. Attempts to enforce the judgment of 29 March 2004

19. No appeals were lodged against the judgment of 29 March 2004 and it became final and enforceable.

20. In 2005 and 2006 the applicant attempted, without success, to have the judgment enforced by making the relevant requests to the Yasamal District Bailiffs Authority (*Yasamal Rayon məhkəmə nəzarətçiləri və məhkəmə icraçıları şöbəsi*).

21. On an unspecified date in 2006 the applicant sent a letter to Azerbaijan's first lady complaining that the judgment of 29 March 2004 had not been enforced and asking for assistance in enforcing it and then in having the premises in question privatised. As to privatisation, the applicant argued that under the domestic law the lessee of State property had a "priority right to purchase" (*ilk növbədə satın almaq hüququ*) the leased property when it was privatised (see paragraph 52 below). A copy of the complaint was addressed to the State Shipping Company.

22. The applicant's letter was forwarded to the Ministry. By a letter to the applicant dated 21 July 2006 the Ministry replied that "the question of

privatisation [of the premises] may be considered after the enforcement of the judgment [of 29 March 2004]”.

23. On an unspecified date the applicant paid the sum ordered in the judgment of 29 March 2004. However, the Ministry did not comply with its obligation to deliver up possession of the premises to the applicant and the premises remained in the hands of the State Shipping Company.

B. Court proceedings concerning further arrears

24. On an unspecified date in 2007 the Ministry lodged a civil action against the applicant, again seeking the termination of the lease contract of 19 May 2000, payment of further arrears (in that regard the Ministry claimed 4,869.82 Azerbaijani manats (AZN)) and the applicant’s eviction from the premises.

25. On 7 March 2007 the Yasamal District Court partially granted the Ministry’s claim and ordered the applicant to pay part of the recalculated arrears (namely AZN 4,314.82, covering the period between 29 March 2004 and the date on which the civil action was lodged in 2007). The remainder of the civil action was dismissed.

26. According to the applicant, he paid the sum ordered in the judgment of 7 March 2007.

C. Enforcement of the judgment of 29 March 2004

27. On 9 June 2009, at the applicant’s request, Local Economic Court no. 1 issued an order (*qərar*) whereby the burden of enforcing the judgment of 29 March 2004 in so far as giving possession of the premises to the applicant was concerned was transferred from the Ministry to the Yasamal District Bailiffs Authority (*Yasamal Rayon məhkəmə icraçıları şöbəsi*).

28. On 3 July 2009 the Yasamal District Bailiffs Authority managed to enforce the judgment of 29 March 2004 so that the applicant gained possession of the premises.

IV. APPEAL LODGED BY THE STATE SHIPPING COMPANY AND TERMINATION OF THE LEASE CONTRACT

29. In July 2009 the State Shipping Company appealed against the judgment of 29 March 2004 and asked for it to be quashed. The Company argued that its procedural rights had been violated because it had not been informed of the proceedings between the applicant and the Ministry. The Company alleged that its rights and obligations had been affected because the proceedings in question had concerned its (the Company’s) property and that under Article 157.1 of the Civil Code a property owner had the right to have his or her ownership rights recognised. The Company requested an extension

of the time-limit for lodging the appeal, claiming that it had become aware of the judgment of 29 March 2004 only on 3 July 2009.

30. On 21 July 2009 the Baku Court of Appeal admitted the State Shipping Company's appeal for examination.

31. On the same day, 21 July 2009, the applicant was notified that the appeal would be heard on 23 September 2009. However, the hearing was postponed several times.

32. The Baku Appeal Court eventually examined the appeal on 19 October 2009. The State Shipping Company participated in the hearing with the status of an "interested person" (see paragraphs 44-45 below).

33. The judgment of 19 October 2009 stated that the applicant had been notified about the hearing but failed to appear. According to the applicant, he was not duly notified about the date and time of the hearing because the notice of the hearing was delivered to him three days after the hearing, on 23 October 2009.

34. By the judgment of 19 October 2009, the appellate court partially quashed the first-instance court's judgment of 29 March 2004: the appellate court terminated the lease contract of 19 May 2000 between the Ministry and the applicant and ordered the applicant's eviction from the premises.

35. The reasons given by the appellate court were that the first-instance court had been in breach of due process and that it had failed to examine all the important factual circumstances. The appellate court held in that connection:

(i) that the proceedings had affected the State Shipping Company's rights and obligations;

(ii) that by not paying the rent, despite the Ministry's warning letter of 2 May 2003 (see paragraph 14 above), the applicant had breached his obligation under the lease to make the payments regularly (see paragraph 9 above); and

(iii) that the first-instance court had failed to take into account the fact that the State Shipping Company was a person to which the premises – the State-owned property – had been "allocated" and consequently, by not informing the Company about the proceedings, the first-instance court had breached Article 167.1.7 of the Code of Civil Procedure (see paragraph 45 below).

36. At the same time, the appellate court referred to Presidential decree no. 629, as the first-instance court had done (see paragraph 18 above). The appellate court also confirmed that the State Shipping Company had had the *de facto* possession of the premises.

37. The applicant appealed to the Supreme Court, arguing that the quashing of the judgment of 29 March 2004 more than five years after it had become final had been unlawful; that the State Shipping Company had no property rights to the premises; that therefore the Company could not claim to be an "interested person"; that he had not paid the rent because of the

unlawful occupation of the premises by the State Shipping Company; and that following the first-instance court's judgment he had paid the arrears as ordered in that judgment.

38. The applicant asked the Supreme Court to send the case to the appellate court for re-examination with a view to quashing the State Shipping Company's appeal and upholding the first-instance court's judgment of 29 March 2004.

39. On 3 February 2010 the Supreme Court dismissed the applicant's cassation appeal and upheld the appellate court's judgment. The reasoning given by the Supreme Court was similar to that of the appellate court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

40. Prior to the adoption of Presidential decree no. 629 of 6 September 1997 various State bodies and companies had had the right to lease State immovable property "allocated" to them. That decree, as in force at the material time, designated the Ministry as the authority vested with the exclusive right to lease the immovable property on behalf of the State. The decree referred to the Ministry as the authority with the right to manage or dispose of all State-owned property (*dövlət əmlakının sərəncamçısı*). Where the Ministry leased State-owned immovable property which was "in [the hands of a State-owned] commercial entity" (*kommersiya prinsipləri əsasında fəaliyyət göstərən müəssisə və təşkilatlarda*) to a physical or legal person, the decree provided that 70% of the rent would be put at the disposal of the commercial entity and the rest of the payment would go into general State funds (*dövlət büdcəsi*).

41. Under the relevant Statutes (namely the Statutes of the State Property Ministry, the Ministry for Economic Development, the State Committee on Management of State Property and the State Committee on Property Issues, approved by Presidential Decrees nos. 229, 495, 313 and 116 on 24 December 1999, 11 June 2001, 16 November 2005 and 24 June 2009 respectively), as in force at the material time, the Ministry was the sole authority with the right to manage or dispose of all State-owned property.

42. Under Article 13, paragraph 4 of the Law on Rent of 30 April 1992, a lessee had the right to renew a lease contract on its expiry.

43. Article 676.0.3 of the Civil Code, as in force at the material time, provided that a lessor of property had to make that property available to the lessee free from any obstruction as to its use.

44. Article 46 of the 1999 Code of Civil Procedure ("the CCP"), as in force at the material time, provided as follows:

Article 46. Participants of proceedings

“Parties, third persons, complainants (*ərizəçilər*), interested persons, public organisations ..., state bodies and other bodies are the persons participating in proceedings.”

45. The relevant parts of Article 167 of the CCP, as in force at the material time, provided as follows:

Article 167. Actions [to be] taken by a judge to prepare a case for court examination

“167.1. By complying with the principle of adversarial [proceedings], a judge takes the following actions to prepare the case for examination in a court:

...

167.1.7. informs physical and legal persons interested in the outcome of the case about the place and time of its examination; ...”

46. Article 46 of the CCP, mentioned above, made a distinction between an “interested person” and a “third party”. Under Article 55.1 of the CCP, a “third party bringing an independent claim regarding the subject of a dispute” was a person who raised his or her own claim against one or both parties to proceedings. Under Article 57.1 of the CCP, a “third party not bringing an independent claim regarding the subject of a dispute” was a person who participated in proceedings on the side of either a plaintiff or a respondent, where his or her rights and obligations vis-à-vis that plaintiff or respondent could be affected by the judgment of a first-instance court. However, the CCP did not give a definition of an “interested person”, other than suggesting in Article 167.1.7 of the CCP (see paragraph 45 above) that that was any physical or legal person “interested in the outcome of the case”.

47. The relevant parts of Article 384 of the CCP, as in force at the material time, provided as follows:

Article 384. Powers of an appellate court

“384.0. An appellate court:

384.0.1. may uphold a [first-instance court’s] judgment unchanged [and refuse to] allow an appeal; ...”

48. The relevant parts of Article 385 of the CCP, as in force at the material time, provided as follows:

Article 385. Grounds for quashing of a court’s judgment in the course of appellate [court examination]

“385.2. The judgment of a first-instance court which is lawful and justified from the factual point of view and which is correct in substance cannot be quashed on merely formal grounds.”

49. The relevant parts of Article 387 of the CCP, as in force at the material time, provided as follows:

Article 387. Breach or wrongful application of procedural rules

“387.2. Irrespective of arguments raised in a complaint [against it], a judgment of a first-instance court shall be quashed in the following circumstances:

...

387.2.4. where a court has resolved a matter relating to the rights and obligations of persons not involved in the proceedings and that resulted in a violation of their rights; ...”

50. The relevant parts of Article 417 of the CCP, as in force at the material time, provided as follows:

Article 417. Powers of a cassation court

“417.1. When examining a case, a cassation court may:

...

417.1.3. entirely or partially quash a judgment or ruling of an appellate court and send the case to the appellate court for re-examination; ...”

51. The relevant parts of Article 418 of the CCP, as in force at the material time, provided as follows:

Article 418. Grounds for quashing an appellate court’s judgment or ruling

“418.1. The breach or incorrect application of substantive or procedural law shall constitute grounds for quashing an appellate court’s judgment or ruling.

...

418.4. Irrespective of arguments raised in a complaint [against it], a judgment or ruling of an appellate court shall be quashed in the following circumstances:

...

418.4.6. where a court has given a judgment or ruling concerning the rights and obligations of persons not involved in the proceedings and that resulted in a violation of their rights; ...”

52. Under the Second State Programme on the Privatisation of State Property in the Republic of Azerbaijan, approved by Presidential Decree no. 383 of 10 August 2000, and the Statute on Privatisation of Leased State Property, approved by Presidential decree no. 432 of 23 December 2000, a lessee of State property had a priority right to purchase that property when it was privatised.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

53. The applicant complained under Article 6 of the Convention that his right to a fair trial had been breached because he had not been informed about the appellate court hearing, the decisions of the higher courts had been

unlawful in that they were arbitrary and no adequate reasons had been given, and the first-instance court's judgment of 29 March 2004 had been quashed a considerable period of time after it had become final and enforceable. The relevant part of Article 6 of the Convention reads as follows:

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

A. Admissibility

54. Although the Government did not raise an objection concerning the application of the six-month time-limit in the present case, the Court can, and indeed must, apply – even of its own motion – the six-month rule set out in Article 35 § 1 of the Convention¹, as it is a public-policy one (see, *mutatis mutandis*, *Merabishvili v. Georgia* [GC], no. 72508/13, § 247, 28 November 2017, with further references).

55. In respect of the complaint concerning the alleged breach of the requirement of legal certainty, the Court notes that the appellate court admitted the State Shipping Company's appeal for examination (see paragraphs 29-30 above). That in itself did not amount to an infringement of the principle of legal certainty (see, *mutatis mutandis*, *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005). The Court reiterates that an infringement of the litigant's "right to a court" only occurs when a higher court quashes a final and enforceable judicial decision (see, among other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 62, ECHR 1999-VII, and *Ryabykh v. Russia*, no. 52854/99, §§ 56-58, 24 July 2003). In the present case the first-instance judgment was quashed on 19 October 2009 by the judgment of the appellate court (see paragraph 34 above).

56. In accordance with the Court's consistent approach where no effective remedy exists against a particular act which is alleged to be in breach of the Convention, the date when that act takes place is taken to be "final" for the purposes of the six-month time-limit for lodging a complaint with the Court (see among other authorities *Nosov*, cited above). In the present case it was possible to lodge a further ordinary appeal against the judgment of 19 October 2009 – namely a cassation appeal. The applicant used that right and appealed to the Supreme Court. He asked the Supreme Court, *inter alia*, to remit the case to the appellate court for re-examination with a view to quashing the State Shipping Company's appeal and upholding the first-instance court's judgment of 29 March 2004 (see paragraph 38 above). In accordance with the relevant domestic law the Supreme Court had the right to quash the appellate

¹ Protocol No. 15 to the Convention has shortened to four months from the final domestic decision the time-limit provided for by Article 35 § 1 of the Convention. However, in the present case the six-month period still applies, given that the final domestic decisions were taken prior to 1 February 2022, date of entry into force of the new rule (pursuant to Article 8 § 3 of Protocol No. 15 to the Convention).

court's judgment and remit the case for re-examination (see paragraph 50 above). The Supreme Court could give a breach of legal certainty as the reason for such a decision. The appellate court in its turn had the right to uphold the judgment of the first-instance court (see paragraph 47 above). The decision of the appellate court could well be based on the need to comply with the principle of legal certainty. Consequently, the Court considers that in the circumstances of the present case an appeal against the judgment of 19 October 2009 could not be considered an ineffective remedy. It follows that the six-month time-limit for lodging the application to the Court started to run from the date on which the Supreme Court's decision of 3 February 2010 – the final decision in the case – was served on to the applicant. The applicant lodged his application on 22 July 2010, which was within the six-month time-limit.

57. The Court further notes that the complaints under Article 6 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Parties' submissions

58. The applicant alleged that he had not been duly notified about the date and time of the hearing held on 19 October 2009 as the relevant notice had been delivered to him three days later, on 23 October 2009. In support of that allegation the applicant submitted a copy of an envelope on which the appellate court was given as the sender and bearing a delivery postmark for the date referred to by the applicant, 23 October 2009.

59. The applicant also argued that the higher courts had failed to address his arguments. The courts had failed in particular to give any significance to the facts that (i) he had stopped paying the rent because of the unlawful occupation of the premises by the State Shipping Company; (ii) following the first-instance court's judgment he had paid the arrears ordered; and (iii) the Company had no property rights over those premises since at the material time the Ministry had an exclusive right to lease or otherwise manage or dispose of the premises in issue.

60. The applicant submitted that the domestic courts had failed to give any significance to the fact that more than five years (approximately five years and six months) had passed after the judgment of 29 March 2004 had become final or to the fact that the judgment in question had been enforced.

61. The applicant further argued that the State Shipping Company had been aware of the judgment of 29 March 2004 long before it had appealed against it and that he (the applicant) had contacted the Company on many occasions after the judgment in order to have it enforced. The applicant emphasised that enforcement of the judgment of 29 March 2004 would have

resulted in his regaining possession of the premises and, consequently, as the lessee of that State property, he could have used his priority right to purchase that property (see paragraph 52 above). He alleged that that had been the real reason why the Ministry had not enforced the judgment.

62. The Government alleged that the applicant had been informed about the hearing of the appellate court. They submitted a copy of a record saying that “[the applicant had] received notification [of the new date for the hearing] by the Baku Appeal Court on 14 October 2009 at 11.30 a.m.”. The same record also contained the applicant’s signature and a note saying “[the signature was dated] 8 October 2009”.

63. The Government also submitted that the domestic proceedings had been in compliance with the right to a fair trial provided under Article 6 of the Convention. The Government emphasised in particular that the State Shipping Company had held the title to the premises, and argued that the first-instance court’s judgment of 29 March 2004 had affected the Company’s rights and obligations.

64. The Government further submitted that the re-examination of the case by the appellate court had served the purpose of protecting the State Shipping Company’s right of access to a court. The Government argued that the Company had held the title to the premises and had therefore had the right to participate in the proceedings as an “interested person”. The first-instance court had failed to invite the State Shipping Company to participate in the proceedings in that capacity. The State Shipping Company had become aware of the judgment of 29 March 2004 only in July 2009 and had lodged its appeal immediately after that. Consequently, the examination of the appeal and allowing it had been in accordance with the law.

2. *The Court’s assessment*

65. The Court finds it appropriate to examine first the applicant’s complaints concerning his right to a reasoned decision and the principle of legal certainty, which in the circumstances of the present case appear to be closely connected. It will then deal with the applicant’s allegation that he was not duly summoned to the hearing of 19 October 2009.

(a) **Applicable principles**

66. Article 6 requires the domestic courts to adequately state the reasons on which their decisions are based (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 185, 6 November 2018).

67. Without requiring a detailed answer to every argument, this obligation presupposes that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question (*ibid.*, § 185, with a further reference).

68. The extent to which the duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 § 1, can only be determined in the light of the circumstances of the case (see *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 37, 20 March 2009, with further references). As regards specifically the reasoning by higher courts, the notion of a fair procedure requires that a national court which has given sparse reasons for its decisions, whether by incorporating the reasons of a lower court or otherwise, did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court (see *Helle v. Finland*, 19 December 1997, § 60, *Reports of Judgments and Decisions* 1997-VIII).

69. An issue of failure to give reasons in judicial decisions under Article 6 § 1 of the Convention will normally arise when the domestic courts have ignored a specific, pertinent and important point raised by an applicant (see *Buzescu v. Romania*, no. 61302/00, § 67, 24 May 2005, and *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, no. 11161/08, §§ 82-84, 14 January 2021).

70. The right to a fair hearing under Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which, in its relevant part, declares the rule of law to be part of the common heritage of the Contracting States (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 237, 1 December 2020). Arbitrariness entails a negation of the rule of law (see *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 145, 21 June 2016) and cannot be tolerated in respect of procedural rights any more than in respect of substantive rights. In that sense, the Convention is essentially a rule-of-law instrument (see *Grzęda v. Poland* [GC], no. 43572/18, § 339, 15 March 2022).

71. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 72, ECHR 2002-VII; *Agrokompleks v. Ukraine*, no. 23465/03, §§ 144 and 148, 6 October 2011; and *Guðmundur Andri Ástráðsson*, cited above, § 238).

72. Legal certainty presupposes respect for the principle of *res judicata*, that is, the principle of the finality of judgments. This principle provides that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. A review should be exercised to correct judicial errors and miscarriages of justice, not to carry out a fresh examination and not for the sake of legal

purism. It should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not grounds for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Sutyazhnik v. Russia*, no. 8269/02, § 38, 23 July 2009; *COMPCAR, s.r.o. v. Slovakia*, no. 25132/13, §§ 63-64, 9 June 2015; *Vardanyan and Nanushyan v. Armenia*, no. 8001/07, §§ 67 and 70, 27 October 2016; and *Guðmundur Andri Ástráðsson*, cited above, § 238).

73. Higher courts' powers to quash or alter binding and enforceable judicial decisions should be exercised for the purpose of correcting fundamental defects. That power must be exercised so as to strike as fair a balance as possible between the interests of an individual and the need to ensure the effectiveness of the system of justice (see among other authorities *COMPCAR, s.r.o.*, cited above, §§ 63-64). The higher courts should not use their power of review to carry out a fresh examination. An infringement of the "right to a court" occurs when a final judgment is quashed other than for reasons of correcting fundamental defects (see, among other authorities, *Kuznetsova v. Russia*, no. 67579/01, § 44, 7 June 2007).

74. The relevant considerations to be taken into account in this connection include, in particular, the grounds on which the domestic authorities overturned the original judgment; whether the disputed procedure complied with the requirements of domestic law; the existence and operation of procedural safeguards in the domestic legal system capable of preventing abuses of that procedure by the domestic authorities; and any other pertinent circumstances of the case (see among other authorities *COMPCAR, s.r.o.*, cited above, §§ 63-64).

75. Where a person claims the right of access to a court, that Convention right may be in conflict with the other party's right to legal certainty, likewise secured under the Convention. Such a situation requires a balancing exercise between conflicting interests (see *Sanofi Pasteur v. France*, no. 25137/16, §§ 56-58, 13 February 2020).

(b) Application of the above-mentioned principles in the present case

76. Turning to the question whether the reasons given by the higher courts for their decisions were adequate in terms of Article 6 § 1 of the Convention and whether the requirement of legal certainty was respected, the Court observes that those courts partially quashed the first-instance judgment which had been in the applicant's favour and thus terminated the lease between him and the Ministry on two substantive grounds (see paragraph 35 (i) and (ii) above), namely:

(i) because the proceedings "had affected the State Shipping Company's rights and obligations"; and

(ii) because in the period between 2002 and 2004 the applicant had failed to pay the rent and was therefore in breach of the lease contract.

77. The higher courts also referred to the fact that the first-instance court had not informed the State Shipping Company about the court proceedings as an “interested person” (see paragraph 35 (iii) above). The higher courts considered this to be a procedural error – a procedural ground – warranting the partial quashing of the first-instance judgment.

78. As regards the latter ground (see paragraph 77 above), the Court observes that the higher courts involved the State Shipping Company in the proceedings as an “interested person” (see paragraphs 35 and 39 above). The CCP did not give a definition of an “interested person”, other than suggesting that it was any physical or legal person “interested in the outcome of the case” (see paragraphs 45-46 above). The Court considers that this establishes a low threshold for being recognised as an “interested person” and, taking into account the fact that under domestic law and the terms of the lease contract part of the payment was to be made into the State Shipping Company’s bank account (see paragraphs 9 and 40 above), the Court sees no reason to disagree with the higher courts’ finding that the State Shipping Company had sufficient grounds to claim a right to participate in the proceedings in that capacity.

79. The proper administration of justice requires that the interests of third parties also be protected. Therefore, if a final judgment has directly affected the rights of a third party – which through no fault of its own has not been involved in the proceedings – the Court may find that the consequences are of such a nature and significance as to justify the quashing of that final judgment (see *Protsenko v. Russia*, no. 13151/04, §§ 29-34, 31 July 2008; see also Articles 387.2.4 and 418.4.6 of the CCP in paragraphs 49 and 51 above). The Court considers (see paragraph 55 above) that the acceptance for examination of the State Shipping Company’s appeal against the judgment of 29 March 2004 did not in itself raise an issue in respect of the principle of legal certainty. However, the higher courts which accepted the appeal and examined it on the merits were under an obligation to give adequate reasons as to whether the fact that the company had not been invited to participate in the proceedings in the first-instance court justified the quashing of its judgment and the termination of the lease between the Ministry and the applicant. In the Court’s view, the higher courts failed in that obligation and the fact that the State Shipping Company was not involved in the proceedings before the first-instance court could not serve as a valid justification for the quashing of the final and enforceable judgment because nothing in the case-file material suggests that that judgment affected the company’s rights or responsibilities in any significant way (see paragraphs 80-81 below).

80. In that regard and in respect of the first substantive ground (see paragraph 76 (i) above) given by the higher courts, the Court observes that, under Presidential decree no. 629 (see paragraph 40 above) and the relevant Statutes (see paragraph 41 above), the Ministry was the sole authority with the right to lease or otherwise manage or dispose of the premises, as they were

the State-owned immovable property. This fact was confirmed by the domestic courts at all three levels (see paragraphs 18, 36 and 39 above).

81. Nevertheless, the higher courts declared that the proceedings between the Ministry and the applicant had affected the State Shipping Company as a person to which that property had been “allocated” (see paragraphs 35 and 39 above). The higher courts failed to give any explanation as to what kind of rights and responsibilities (if any) such “allocation” entailed, how the judgment of the first-instance court had interfered with those alleged rights and responsibilities and whether that interference was a sufficient ground for the termination of the lease contract. The Court notes in that connection that prior to the adoption of Presidential decree no. 629 various State bodies and companies, including the State Shipping Company, had the right to lease State immovable property “allocated” to them (see paragraph 40 above). The decree deprived them of that right. Furthermore, at the material time, the power to manage and dispose of all State-owned property was centralised in one authority, the Ministry (see paragraphs 40-41 above) and it was the Ministry that had signed the lease contract with the applicant. In the Court’s view, by not addressing those issues the higher courts failed to provide adequate reasoning in respect of the first substantive ground on which they quashed the first-instance court’s judgment and ignored the applicant’s pertinent argument (see paragraph 37 above) in that regard.

82. In respect of the second substantive ground (see paragraph 76 (ii) above), the Court observes that the first-instance court found that the applicant had no physical access to the premises. It ordered that the Ministry deliver up possession of those premises to the applicant (see paragraph 18 above). The higher courts likewise confirmed that the premises had been *de facto* in the hands of the State Shipping Company (see paragraphs 36 and 39 above). Nevertheless, they considered that the applicant’s withholding of the rent should have led to the termination of the lease between him and the Ministry. The Court observes in that regard that, in accordance with the relevant domestic law, as the lessor of the premises the Ministry had to provide them to the applicant – the lessee – free from any obstruction as to their use (see paragraphs 18 and 43 above). The higher courts did not explain why the applicant should have continued paying the rent even during the period when he had had no physical access to the premises occupied by a third person, the State Shipping Company. They failed to address the applicant’s pertinent argument (see paragraph 37 above) in that regard. The higher courts did not give any reasons as to why the applicant should have to abide by his legal and contractual obligations – namely the obligation to pay the rent – while the Ministry was failing to comply with its legal and contractual obligations – namely the obligation to provide vacant possession of the premises. They also did not give any reasons as to how the applicant’s failure to pay rent for the premises which had been occupied by the State Shipping Company had affected the latter’s rights.

83. In view of all the above, the Court considers that none of the reasons (see paragraphs 76-77 above) given by the higher courts worked towards rectifying any fundamental flaws in the first-instance court's judgment of 29 March 2024. The first substantive ground and the procedural ground relied on by the higher courts (see paragraphs 76 (i) and 77 above) remained void of substance as nothing in the decisions of those courts demonstrated that the judgment of 29 March 2024 had affected the State Shipping Company's rights or responsibilities. On the contrary, the higher courts' decisions simply reversed the first-instance court's judgment to the effect that the final decision was entirely in the Ministry's favour. Following the quashing of the first-instance judgment, the premises remained State-owned property entirely under the power of management and disposal by the Ministry. Similarly, the second substantive ground (see paragraph 76 (ii) above) referred to by the higher courts merely constituted a different interpretation of the facts and law relevant to the applicant's obligation to pay rent to the Ministry.

84. Against this background, the Court considers that the higher courts failed to give adequate reasoning for their decisions and that the higher courts' review of the judgment of 29 March 2004 was not aimed at correcting a judicial error or a miscarriage of justice and was merely for the purpose of obtaining a rehearing and fresh determination of the case. There have therefore been violations of the right to a reasoned decision and the principle of legal certainty.

85. Finally, the Court will turn to the applicant's complaint that he was not duly informed of the appellate court's hearing. In this connection, the Court refers to the relevant principles as regards hearings before courts of appeal (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 97, ECHR 2009) and the right to participate in a hearing including the right to be informed of its date and place sufficiently in advance to make the necessary arrangements (*ibid.*, § 99; *Gankin and Others v. Russia*, nos. 2430/06 and 3 others, §§ 34-39 and 42, 31 May 2016; and *Schmidt v. Latvia*, no. 22493/05, §§ 86-90, 92 and 94-95, 27 April 2017).

86. The Court notes that the hearing in the Baku Court of Appeal on the merits of the case, initially scheduled to be held on 23 September 2009, was postponed several times, and eventually took place on 19 October 2009 (see paragraphs 31-32 above).

87. The parties are in dispute as to whether the applicant was duly notified about the date and time of the hearing of 19 October 2009. According to the applicant, a notice about the date and time of the hearing was delivered to him three days after the hearing, on 23 October 2009. In support of that allegation the applicant submitted a copy of the relevant envelope (see paragraph 58 above). The Government did not contest that evidence. As to the record (see paragraph 62 above) submitted by the Government, the Court notes that it contained incomplete and confusing information. It did not clarify whether the applicant had been notified on 8 or 14 October 2009. More

importantly, it did not mention 19 October 2009 as the new date for the hearing.

88. The Court also observes that it was stated in the judgment of 19 October 2009 that the applicant had been notified of the hearing but had failed to appear (see paragraph 33 above). However, there is nothing in the case file material to suggest that the appellate court had checked the validity of the notification prior to embarking on hearing the merits of the case or that it had established whether the applicant had in fact been informed of the hearing.

89. Consequently, the Court considers that the applicant's right to be informed about the court hearing in question was not respected. He was not afforded an opportunity to exercise his right to attend, to make oral submissions, to choose another way of participating in the proceedings or to ask for an adjournment.

90. In sum, the Court concludes that the decisions of the higher courts lacked adequate reasoning and that – in the circumstances of the case – there was a breach of the principle of legal certainty, which was further aggravated by the fact that the applicant was not duly informed of the appellate court's hearing.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 571,849 euros (EUR) in respect of pecuniary and EUR 5,000 in respect of non-pecuniary damage. The applicant argued that he could have obtained ownership of the premises if he had been given possession of them in accordance with the judgment of the first-instance court; and that those premises were worth EUR 571,849.

94. The Government submitted that the applicant had substantiated his claim in respect of pecuniary damage by referring to a valuation of the building, but had never owned the building: he had only held a lease, under the contract of 19 May 2000. The applicant was therefore not entitled to compensation for any pecuniary damage as claimed. The Government asked the Court to reject the applicant's claim in respect of pecuniary damage.

95. As to the applicant's claim in respect of non-pecuniary damage, the Government submitted that the applicant had failed to substantiate his claim and that finding a violation would constitute sufficient redress under this head.

96. The Court notes that it has found a violation of Article 6 § 1 of the Convention in the present case on account of, *inter alia*, the failure of the domestic courts to give adequate reasons and breach of the principle of legal certainty. It further reiterates that under the domestic law the applicant may have his case reopened (see *Aykhan Akhundov v. Azerbaijan*, no. 43467/06, §§ 61 and 127, 1 June 2023). The Court therefore rejects the applicant's claim in respect of pecuniary damage. However, ruling on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

97. The applicant also claimed EUR 1,200 for the costs and expenses incurred before the Court.

98. The Government observed that the contract between the applicant and his representative had been signed in July 2017 and that it contained a clause under which the representative would lodge an application before the Court on behalf of the applicant, whereas the applicant's application had previously been lodged before the Court, in 2010. Therefore, either the contract was void or the applicant could not claim reimbursement for the major part of the work envisaged by that contract. The Government argued that, consequently, the applicant could claim only EUR 200 under this head.

99. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant, to be paid into the bank account of the applicant's representative, Mr A. Mustafayev.

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*
 - (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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of Mr A. Mustafayev;
- (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;

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

Done in English, and notified in writing on 10 April 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Ivana Jelić
President