



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

FIRST SECTION

CASE OF RAHMANOVA v. AZERBAIJAN

(Application no. 34640/02)

JUDGMENT

STRASBOURG

10 July 2008

FINAL

10/10/2008

This judgment is final but it may be subject to editorial revision. 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 Rahmanova v. Azerbaijan,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 19 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 34640/02) 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 Leyli Pasha qizi Rahmanova (*Leyli Paşa qızı Rəhmanova* – “the applicant”), on 5 September 2002.

2. The applicant was represented by Mr N. Abdullayev, a lawyer practising in Baku. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr C. Asgarov.

3. The applicant alleged that the quashing of the final judicial decision in her favour by way of the procedure of additional cassation had violated her rights under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. By a decision of 1 September 2005 the Court declared the application admissible.

5. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Facts leading to litigation

6. The applicant was born in 1938 and lives in Baku.

7. She owned a three-room apartment in Baku. In 1991, after getting married, the applicant's son and his wife (G.R.) moved into the applicant's apartment. After some time, the applicant's relations with G.R. started to deteriorate. For this reason, the family decided to divide the apartment, with two rooms taken by the applicant and the remaining one room by her son and G.R.

8. In 1995 they decided to sell the apartment, divide the proceeds and live separately thereafter. After the sale of the apartment, the applicant used her part of the proceeds to purchase herself a new, smaller apartment, where she began to live alone. Her son and G.R. used their part of the proceeds to pay off their debts and resided temporarily in various places.

9. According to the applicant, in 1996 her son asked her to temporarily register him and his family in her new apartment as co-residents. He explained that without proper residence documents he was unable to get a job. The applicant allowed her son and G.R. to register temporarily, for a term of one year, as co-residents in her apartment. However, according to the applicant, pursuant to their agreement, her son and G.R. never moved in and never lived in the apartment. Later, the applicant successfully applied for their removal from the relevant registration records.

10. In 2001 the applicant's son and G.R. divorced. They had two children who appear to have stayed in G.R.'s custody.

B. Original proceedings

11. In 2000 G.R. filed a lawsuit, claiming the right to reside in the applicant's apartment with her children and requesting the court to order their re-registration in the apartment as the applicant's co-residents. On 24 July 2000 the Narimanov District Court upheld G.R.'s claim and recognised her and her children's residence rights to the apartment.

12. Upon an appeal by the applicant, on 29 August 2000 the Baku City Court (the court of cassation under the old civil procedure laws effective at that time) quashed the district court's judgment, finding that it had not assessed all the relevant facts of the case. The case was remitted for re-trial at the first instance.

13. After re-trial, on 8 December 2000 the Narimanov District Court ruled in the applicant's favour and dismissed G.R.'s claims. It found that G.R. had failed to produce sufficient evidence supporting her claims to the apartment.

14. On 27 March 2001 the Court of Appeal, in the absence of the applicant, set aside the district court's second judgment and ruled in G.R.'s favour. Contrary to the applicant's arguments, it determined that G.R. had permanent registration in the disputed apartment and, therefore, had residence rights.

15. Upon the applicant's appeal in cassation, on 4 July 2001 the Supreme Court quashed the Court of Appeal's judgment. It found that the Court of Appeal had breached the procedural rules by hearing the case in the applicant's absence. Furthermore, it found that the Court of Appeal had failed to consider certain crucial facts, including the fact that G.R. had allegedly never resided in the disputed apartment. The case was remitted back to the Court of Appeal for re-examination.

16. On 11 October 2001 the Court of Appeal found that G.R.'s registration in the disputed apartment had been temporary, that she had never lived there and never engaged in joint household activities with the applicant. Thus, relying on the relevant provisions of the Housing Code, the court held that G.R. had never acquired residence rights to the apartment. Accordingly, it dismissed G.R.'s appeal and upheld the district court's ruling of 8 December 2000 in favour of the applicant.

17. On 11 January 2002 the Supreme Court upheld the Court of Appeal's judgment. The Supreme Court's decision became final and enforceable upon its delivery.

C. Reopening of the proceedings

18. Having disagreed with the outcome of the proceedings in the domestic courts, G.R. filed an additional cassation appeal asking for a review of the Supreme Court's final decision by the Plenum of the Supreme Court ("the Plenum"). By a letter of 14 May 2002, the President of the Supreme Court rejected G.R.'s request, finding no grounds for reopening the proceedings in the Plenum and confirming the correctness of the Supreme Court's decision.

19. However, contrary to the rejection letter of 14 May 2002 and under circumstances unknown to the applicant, on 19 July 2002 the case was actually referred to and reviewed by the Plenum. At that time, more than six months had passed from the Supreme Court's decision of 11 January 2002.

20. The Plenum noted that the main argument for the lower courts' decisions in the applicant's favour had been that G.R. and her children had never lived in the apartment. It deemed that, under domestic law, this fact was an insufficient basis for adjudging the case in the applicant's favour.

The Plenum further found that the lower courts had misapplied the domestic law and failed to establish the facts necessary for applying the appropriate legal provisions. It held that, instead, it would be proper to apply Articles 60 and 87 of the Housing Code, as well as the decision of the Constitutional Court of 12 March 1999 on the interpretation of Article 60 of the Housing Code. In accordance with these provisions, the Plenum found that the facts of the case did not establish grounds for G.R.'s loss of residence rights to the apartment.

21. In conclusion, the Plenum "varied" the Supreme Court's decision of 11 January 2002 and ordered that G.R. and her children be allowed to move into the applicant's apartment.

D. Latest developments in the case

22. On 8 January 2005 the applicant sold the apartment to G.R. The sale contract was certified by a notary public. According to the contract, the purchase price was 140,000,000 Azerbaijani manats. On 24 February 2005 G.R. obtained an ownership certificate to the apartment as its sole owner.

23. It appears that the applicant moved out of the apartment after the sale and established residence elsewhere.

24. In October 2006 the applicant challenged the validity of the sale contract of 8 January 2005 in the domestic courts. She relied on two arguments. First, she argued that she had not known that she was signing a contract concerning the sale of the apartment, because G.R. had lied to her about the nature of the contract. Second, the applicant argued that the contract had been drafted in the new Latin alphabet¹, which she allegedly did not know how to read.

25. Following a series of appeals, on 20 November 2007 the Supreme Court upheld the lower courts' ruling dismissing the applicant's claim. It held that the claim was unsubstantiated as there was sufficient evidence in the case file proving that the sale contract was valid and that she had sold and moved out of the apartment voluntarily. It found that the contract had been duly concluded in the presence of a notary public. The court further noted that, shortly after the sale, the applicant applied for the removal of her name from the apartment's registration documents and that, from 4 April 2005, she had been registered as a resident of another apartment pursuant to her own application. It further noted the existence of documentary evidence showing that, after the sale, G.R. and her children were registered as residents in the disputed apartment and that G.R. paid all the communal charges for the apartment.

1. The writing system based on the Latin alphabet is currently used for the Azerbaijani language instead of the Cyrillic alphabet used prior to 1991.

II. RELEVANT DOMESTIC LAW

A. Legislation

26. The Law on Courts and Judges of 1997 provides as follows:

Article 77. The Supreme Court

“[T]he Supreme Court shall be the highest judicial authority with regard to civil ..., criminal, administrative and other disputes falling within the jurisdiction of the general and specialised courts.

The Supreme Court [is] a court of cassation instance ...”

Article 79. The Plenum of the Supreme Court and its competence

“The Plenum of the Supreme Court shall be composed of the President, Vice Presidents and judges of the Supreme Court, the President of the Economic Court, the President of the Court of Appeal and the President of the Supreme Court of the Nakhchivan Autonomous Republic. ...

The Plenum of the Supreme Court ... shall, in the manner established by law, review cases under the procedure of additional cassation ..., on submission of the President of the Supreme Court, or pursuant to a protest by the Chief Prosecutor or appeal by the defendant ...”

Article 83. The competence of the President of the Supreme Court

“The President of the Supreme Court ... shall, in cases and under the procedure provided by law, submit cassation-instance decisions for the review of the Plenum of the Supreme Court ...”

27. The Code of Civil Procedure of the Republic of Azerbaijan of 2000 provides as follows:

Article 419. The decision of the cassation-instance court

“419.4. The decision [of the cassation-instance court] shall enter into force from the moment of its delivery.”

Article 422. Review of cassation-instance decisions

“Decisions of the Supreme Court of the Republic of Azerbaijan ... may be reviewed by the Plenum of the Supreme Court of the Republic of Azerbaijan under the procedure of additional cassation upon a submission, appeal or protest.”

Article 423. The right to file a submission, appeal or protest

“A submission concerning a decision of the Supreme Court of the Republic of Azerbaijan ... may be made by the President of the Supreme Court on the basis of an application by persons non-parties to the case whose interests are affected by the judicial acts. An appeal may be filed by a party to the case represented by an advocate. [A protest may be filed by the Chief Prosecutor in certain specified circumstances.]”

Article 424. The grounds for review by the Plenum of the Supreme Court

“424.1. The Plenum considers cases exclusively on the points of law.

424.2. The grounds for quashing decisions of the cassation-instance court are the following:

424.2.1. the decision of the cassation-instance court is based on a legal norm declared unconstitutional by the Constitutional Court;

424.2.2. the cassation-instance court’s ruling infringes the rights of persons who were not a party to the proceedings;

424.2.3. there is no substantive basis for the reasons referred to in the decision of the cassation-instance court;

424.2.4. the resolute part of the decision of the cassation-instance court does not correspond to its descriptive and reasoning parts.”

Article 426. Referral of a submission, appeal or protest [to the Plenum]

“426.1. If appropriate grounds exist, the President [of the Supreme Court] shall refer the submission, appeal or protest, together with the case file, to the Plenum of the Supreme Court.

426.2. The submission, appeal or protest shall be filed within two months after the date of delivery of the [relevant] decision of the Supreme Court. ...”

Article 429. The competence of the Plenum of the Supreme Court

“429.0. Upon review of a case under the procedure of additional cassation, the Plenum of the Supreme Court has the competence to: ...

429.0.1. uphold the decision of the cassation-instance court and dismiss the submission, appeal or protest;

429.0.2. vary the decision of the cassation-instance court;

429.0.3. quash, in full or in part, the decision of the cassation-instance court, as well as the related decision of the appellate court, and remit the case for re-examination by the appellate court; ...”

B. Position of the Constitutional Court

28. In its decision *On review of the conformity of the decision of the Plenum of the Supreme Court of 1 February 2002 to the Constitution and laws of the Republic of Azerbaijan, based on the complaint by A.H. Zalov*, dated 21 May 2004, the Constitutional Court expressed its position concerning the competence of the Plenum of the Supreme Court to vary the final decisions of the Supreme Court under the procedure of additional cassation.

29. The Constitutional Court acknowledged that, according to Article 429.0.2 of the CCP, the Plenum of the Supreme Court was empowered to vary (that is, introduce amendments to) the decision of the cassation-instance court. However, amendments made in such a manner could comprise only matters that were not related to the merits of the case. The Plenum of the Supreme Court could vary the cassation-instance court's decision only if the factual circumstances of the case had been fully established by the lower courts, and if there was no need for a new inquiry into the circumstances of the case, re-assessment of evidence or examination of additional evidence. Since the cassation-instance court could not examine the case on points of fact, it followed that the Plenum of the Supreme Court could not vary the cassation-instance court's decision relying upon the factual circumstances of the case either.

30. The Constitutional Court further held that, unlike the first-instance and appellate courts, the courts of cassation and additional cassation did not have competence to deliver a judgment on the merits. If, during the additional-cassation review, the Plenum of the Supreme Court found that the circumstances of the case had not been clearly established during the original proceedings and that it was necessary to admit and assess additional evidence, the Plenum had to quash the erroneous decision of the Supreme Court, as well as the related judgment of the Court of Appeal, and remit the case for re-examination in the Court of Appeal. Accordingly, if it discovered judicial errors in the Supreme Court's decision, the Plenum of the Supreme Court had no competence to rule on the merits, thus substituting its own judgment for the judgment of the lower courts, but was obligated to remit the case to the appropriate judicial instance.

C. Domestic practice

31. Additional cassation proceedings in the Plenum of the Supreme Court can be initiated at the discretion of the President of the Supreme Court, and may be done so following a motion (an additional cassation appeal) by a party to the proceedings. The Plenum itself does not take a decision on the reopening of the proceedings and admissibility of additional cassation appeals.

32. An additional cassation appeal is first submitted to the President of the Supreme Court. The President, at his or her sole discretion and without holding any formal judicial hearing, decides if there are any grounds to reopen the case and transmit the appeal to the Plenum. If the President decides that the proceedings should be reopened, he or she then transmits the additional cassation appeal, together with the case file, for the in-substance review of the Plenum at its next sitting. Meanwhile, if necessary, the President may issue an order suspending the execution of the final judgment pending the review of the case by the Plenum.

33. If the President deems that there are no grounds for additional cassation review, he or she sends a rejection letter to the applicant, briefly describing the reasons for the refusal to reopen the proceedings and to transmit the appeal to the Plenum.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The parties' submissions

34. On 31 May 2006 the Government informed the Court for the first time about the fact that the applicant had sold her apartment on 8 January 2005 and was no longer its owner (see paragraphs 22-23 above). Although the sale had taken place prior to the Court's decision on admissibility in the present case, the applicant had failed to inform the Court about it and the Court examined the admissibility of the applicant's complaints without knowledge of this fact. The Government claimed to have likewise had no knowledge of this fact prior to the Court's decision on admissibility.

35. Relying on Rule 47 of the Rules of Court, the Government argued that the applicant's failure to disclose all the facts of the case amounted to an abuse of the right of petition under Article 35 § 3 of the Convention. Alternatively, the Government argued that the applicant was no longer a victim of the alleged violations (in particular, the alleged violation of Article 1 of Protocol No. 1 to the Convention) within the meaning of Article 34 of the Convention, because the private sale of the apartment led to a situation where it would no longer be possible for the State to "restore" the applicant's property rights to her.

36. Asked by the Court to comment on the Government's objections, the applicant replied that she had not been aware that she had, in fact, concluded a sale contract with G.R. on 8 January 2005. Therefore, she could

not have informed the Court about this fact because she had not been aware of it. She maintained that she had been defrauded by G.R. and forced to sign the contract without understanding its true nature. She had allegedly been led to believe that she was signing a contract relating to a different matter. She also claimed that she could not understand the text of the contract that she had signed because she could not read or write in the new Latin alphabet.

B. The Court's assessment

37. The Court reiterates that, pursuant to Rule 55 of the Rules of Court, any plea of inadmissibility must be made by the respondent Party in its observations on the admissibility of the application, in so far as its character and the circumstances permit. Unless there are particular reasons which would have absolved the Government from raising their objection in the proceedings on admissibility, they are stopped from doing so at a later stage (see *Akimova v. Azerbaijan*, no. 19853/03, § 32, 27 September 2007). In the present case, however, the Court accepts the Government's argument that they had no knowledge of the fact of the apartment's sale prior to the Court's decision on admissibility. As it was a transaction between private parties and the applicant's court action challenging its validity took place after the Court's decision on admissibility, it is reasonable to make an inference that the Government may not have been immediately aware of it. Accordingly, it cannot be concluded that the Government are stopped from raising their objections at this stage of the proceedings. The Court will therefore proceed to examine them.

38. As to the Government's argument concerning abuse of the right of petition, the Court reiterates that, according to Rule 47 § 6 of the Rules of Court, applicants shall keep the Court informed of all circumstances relevant to the application. An application may be rejected as abusive under Article 35 § 3 of the Convention if, among other reasons, it was knowingly based on untrue facts (see *Varbanov v. Bulgaria* no. 31365/96, § 36, ECHR 2000-X; *Řehák v. Czech Republic* (dec.), no. 67208/01, 18 May 2004; and *Kérétchachvili v. Georgia* (dec.), no. 5667/02, 2 May 2006). Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Hüttner v. Germany* (dec.), no. 23130/04, 19 June 2006).

39. In the present case, it indeed seems that the applicant failed to disclose and subsequently misrepresented the information concerning the sale of the apartment. The Court notes that after it had asked the applicant to comment on the Government's objections concerning her failure to disclose this information, she attempted to challenge the validity of the sale contract in the domestic courts. At the outcome of those proceedings, it was found

that the contract was valid and that, accordingly, the applicant had been fully aware of the nature of the contract at the time it was concluded (see paragraphs 24-25 above). In the absence of any indication that these proceedings were somehow unfair or arbitrary, the Court accepts the factual findings of the domestic courts in those proceedings.

40. Moreover, as it appears from the materials made available to the Court, shortly after the sale of her title to the apartment the applicant had changed the registration of her residence from the disputed apartment to another by filing the necessary applications with the relevant authorities. Therefore, whereas the facts of the case show that the applicant had voluntarily applied to change her residence records and moved out of the sold apartment, the Court finds it difficult to believe her submission that she had no intention to sell her apartment and that she had concluded the sale contract without the knowledge that it was in fact a sale contract. It is equally difficult to accept the applicant's argument that she could not read or write Azeri in the Latin alphabet, taking into account the fact that her initial application to the Court was drafted using the Latin alphabet by the applicant herself at the stage when she was not yet represented by a lawyer.

41. Nevertheless, the Court is of the opinion that the applicant's failure to disclose the information concerning the subsequent sale of her title to the apartment, even if intentional, cannot be considered as amounting to abuse of the right of petition. The withheld information did not concern "the very core of the case" and was not directly relevant to any of the applicant's complaints. The mere fact that the applicant sold the apartment at a later date, pursuant to a private agreement, was not capable of changing the Court's reasoning, both in its decision on admissibility and in the present judgment, with regard to the alleged violation of the applicant's rights due to the Plenum's decision of 19 July 2002.

42. Likewise, the Court cannot agree with the objection that the applicant can no longer be considered a victim of the alleged violation of Article 1 of Protocol No. 1 to the Convention. The applicant's complaint concerns the restriction of her property rights to the apartment by the Plenum's decision of 19 July 2002. Although it is undisputed that after the alleged interference the applicant still remained the apartment's title holder, her property rights to it were allegedly restricted after the Plenum's decision. The fact that she subsequently sold her title to the apartment does not deprive her of the status of a victim during the period prior to this sale.

43. For the above reasons, the Court rejects the Government's preliminary objections.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

44. The applicant complained that the reopening of the proceedings and the decision of the Supreme Court's Plenum of 19 July 2002 had violated her rights under Articles 6 § 1 and 13 of the Convention. In particular, she maintained that the reopening of the proceedings and setting aside of the final decision of 11 January 2002 set at naught the entire judicial process that had ended in her favour. She also complained that she had not been informed about the referral of the case to the Plenum and had not been invited to attend the hearing. Lastly, she complained that the Plenum had exceeded its competence by examining the case on points of fact and delivering a new judgment on the merits.

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...”

Article 13 of the Convention provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties' submissions

45. The Government argued that the reopening of the proceedings had been carried out in a lawful manner. Even though the President of the Supreme Court initially rejected G.R.'s request for a reopening of the proceedings, the Plenum nevertheless had competence to decide, of its own motion, to reopen the proceedings and to examine the case. There was no provision in the domestic law prohibiting the referral of the additional cassation appeal to the Plenum despite a prior refusal by the Supreme Court's President to re-open the proceedings.

46. The Government further submitted that Article 426.2 of the Code of Civil Procedure (“the CCP”) provided for a two-month deadline for filing an additional cassation appeal. However, the domestic law did not establish any time-limits for examination of such an appeal by the Plenum.

47. As to the Plenum's competence to vary the Supreme Court's final decision, the Government maintained that the Plenum had not exceeded its competence, because under Article 429.0.2 of the CCP it was specifically empowered to do so. According to the Government, the Plenum examined the case exclusively on the points of law. It did not establish any new facts, but simply assessed the facts as established by the domestic courts and applied another set of domestic legal provisions to those facts.

48. The applicant submitted that, in accordance with the domestic law, the reopening of the proceedings and referral of the case to the Plenum was within the exclusive competence of the Supreme Court's President. Any additional cassation appeal was to be submitted to the Supreme Court's President and not directly to the Plenum. The Plenum had no competence to examine the case of its own motion in the absence of a referral by the President of the Supreme Court. Accordingly, the applicant submitted that the examination of the case by the Plenum after the Supreme Court's President's refusal to reopen the proceedings had been unlawful under the domestic law and in breach of her right to a fair trial under Article 6 § 1 of the Convention and right to an effective remedy under Article 13 of the Convention.

49. The applicant acknowledged that, in accordance with Article 429.0.2 of the CCP, the Plenum had competence to vary the final decision of the court of cassation instance. However, she disagreed with the Government as to the scope and extent of the Plenum's power to vary the cassation decision in the manner specified under that provision. Specifically, relying on the case-law of the Constitutional Court, she maintained that the Plenum was empowered to vary the Supreme Court's final decision only when the amendments introduced by the Plenum would not interfere with the merits of the case and would not alter the conclusions reached. On the other hand, if the Plenum found the Supreme Court's decision on the merits incorrect or unlawful, it should have quashed it and remitted the case to the Court of Appeal for a new examination on the merits.

50. The applicant further submitted that the Plenum had, in essence, examined the case on points of fact, which was outside its competence. In its decision, the Plenum had given its own assessment as to the facts of the case and relied on a different set of domestic legal provisions, which required a new round of fact-finding within the framework of an adversarial judicial process. However, the Plenum delivered its decision without remitting the case to the Court of Appeal for an examination of the relevant factual circumstances. In essence, under the guise of "varying" the Supreme Court's decision, the Plenum issued a new judgment on the merits upholding G.R.'s claim in full and, thus, set at naught the entire judicial process that had ended in the applicant's favour.

B. The Court's assessment

51. The Court considers that the present complaints concern two distinct, albeit related, sets of issues. The first, substantive, issue raises a question whether the quashing of a final judgment under the procedure of additional cassation in the present case was in itself compatible with the applicant's "right to court" under the Convention. The second, procedural, set of issues concerns the question whether the alleged procedural defects during the

review of the applicant's case by the Plenum violated her rights to a fair trial and effective remedy.

1. Substantive issue

52. At the outset, having regard to the differences in the parties' opinions concerning this matter, the Court considers that it is necessary to assess the scope and consequences of the Plenum's decision. In doing so, it will look behind appearances and investigate the realities of the situation complained of.

53. The Court notes that, formally, the Plenum "varied" the Supreme Court's decision of 11 January 2002 in accordance with Article 429.0.2 of the CCP. This raises a question as to what extent such "varying" differed in its legal consequences from the simple quashing of the final decision. The Court takes note of the ruling of the Constitutional Court of Azerbaijan, according to which Article 429.0.2 of the CCP did not empower the Plenum to "vary" the Supreme Court's decisions based on a finding of errors of fact or law, as this would, in essence, constitute a new judgment on the merits of the case. Instead, in such a situation, the Plenum had to remit the case for re-examination. It therefore follows that, relying on Article 429.0.2 of the CCP, the Plenum could make only technical changes to the Supreme Court's decisions that would not interfere with the substantive conclusion on the merits of the case.

54. The Court notes, however, that in the present case the substance of the Plenum's decision involved a direct examination of the merits of the case and comprised both an assessment of the factual circumstances of the case and the application of the relevant domestic law to those facts. Furthermore, following such an examination, the Plenum "varied" the operative part of the original judgment which had been in the applicant's favour in that it dismissed G.R.'s claim. The Plenum upheld G.R.'s claim in full and thus reversed the ruling in G.R.'s favour. In such circumstances, the Court considers that the Plenum's decision, albeit characterised as merely "varying" the existing judicial ruling, in essence quashed the final decision of 11 January 2002 and constituted a new judgment on the merits of the case.

55. Accordingly, the Court will base its analysis under Article 6 of the Convention below on the premise that the Plenum quashed the final domestic decision and delivered a new judgment on the merits, ruling against the applicant.

56. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. 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 *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

57. Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State’s domestic legal system allowed a final and binding judicial decision to be quashed by a higher court on an application made by a State official whose power to lodge such an application is not subject to any time-limit, with the result that the judgments were liable to challenge indefinitely (see *Ryabykh v. Russia*, no. 52854/99, §§ 54-56, ECHR 2003-X).

58. The Court has previously found a violation of the principle of legal certainty and an applicant’s “right to court” in many cases in which a judicial decision that had become final and binding was subsequently quashed by a higher court on an application by a State official whose power to intervene was not subject to any time-limit (see, among many other authorities, *Brumărescu*, cited above, §§ 61-65; *Ryabykh*, cited above, §§ 51-56; *Volkova v. Russia*, no. 48758/99, §§ 34-36, 5 April 2005; and *Kutepov and Anikeyenko v. Russia*, no. 68029/01, §§ 48-52, 25 October 2005).

59. Admittedly, the procedure of additional cassation under Azerbaijani law had certain characteristic features which were distinct from those examined by the Court in the cases cited in the above paragraph. First, the initial motion to reopen the proceedings under the procedure of additional cassation could be made by one of the parties to the proceedings in the form of an additional cassation appeal, although the decision whether to submit the case for the Plenum’s review was ultimately within the discretionary power of the Supreme Court’s President (see Articles 423 and 426 of the CCP and Article 83 of the Law on Courts and Judges). Second, there was a two-month time-limit for filing an additional cassation appeal and re-opening of the proceedings (see Article 426.2 of the CCP). However, following such an appeal, there appeared to be no specific time-limit for the actual review of the case by the Plenum. Third, the procedure of additional cassation could be initiated only when the ordinary appeals had been exhausted, that is, after the delivery of a final decision by the court of cassation instance, and could not be used to obtain a review of judgments of first-instance or appellate courts which had become final (see Article 422 of the CCP).

60. These distinctions, however, are not of crucial importance. What is relevant in the present case is that the procedure of additional cassation allowed a final and binding judicial decision to be quashed on the ground that the substantive law had not been applied correctly by the ordinary civil courts.

61. In this regard, the Court observes that, under the domestic law, the highest judicial authority in Azerbaijan for ordinary appeals in civil proceedings was the Supreme Court, as a court of cassation instance (see Article 77 of the Law on Courts and Judges and Article 419 of the CCP). The judgment concerning the applicant's case became final and the civil proceedings were terminated upon the delivery of the Supreme Court's decision of 11 January 2002. Thereafter, there was no higher judicial instance to which the parties would have direct access. In this connection, the Court reaffirms its previous finding that the procedure of additional cassation, available after the Supreme Court's final decision, constituted in its essence an indirect, extraordinary appeal (see *Babayev v. Azerbaijan* (dec.), no. 36454/03, 27 May 2004).

62. The Court reiterates that the principle of legal certainty insists that no party is entitled to seek a reopening of proceedings merely for the purpose of a rehearing and a fresh examination of the case. The power to quash or alter binding and enforceable judicial decisions should be exercised to correct fundamental defects, but not to carry out a fresh examination. The review should not constitute an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. Departures from that principle are justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh*, cited above, § 52, and *Kot v. Russia*, no. 20887/03, § 24, 18 January 2007).

63. The Court observes that, before the additional cassation proceedings were instituted, the merits of the applicant's case had been examined in ordinary civil proceedings before the first-instance, appellate and cassation courts and such examination resulted in the Supreme Court's final decision of 11 January 2002 upholding the lower courts' judgments in the applicant's favour. However, this final decision was quashed, and its ruling reversed, by the Plenum solely on the ground that the substantive law had been incorrectly applied. It was not claimed or established during the additional cassation proceedings that the domestic courts of three levels of jurisdiction acted outside their competences or that there was a fundamental defect in the proceedings before them.

64. It is unavoidable that in civil proceedings the parties would have conflicting views on the application of the substantive law. The domestic courts are called upon to examine their arguments in a fair and adversarial manner and make their assessment of the claim. The fact that the Supreme Court's President and Plenum disagreed with the assessment made by the domestic courts was not, in itself, an exceptional circumstance warranting the reopening of the proceedings concerning the applicant's case and using this extraordinary remedy to set aside a binding and enforceable judgment (compare with *Kot*, cited above, § 29).

65. Having regard to these considerations, the Court finds that, by quashing the Supreme Court's final decision of 11 January 2002, the Plenum of the Supreme Court infringed the principle of legal certainty and the applicant's "right to court" under Article 6 § 1 of the Convention. There has accordingly been a violation of that Article.

2. Procedural issues

66. With regard to the applicant's further complaints about the procedural defects of the proceedings before the Plenum of the Supreme Court, the Court considers that, having concluded that there has been an infringement of the applicant's "right to court" by the very use of the additional cassation procedure, it is not necessary to examine additionally whether the procedural guarantees of Article 6 were respected in those proceedings (compare with *Ryabykh*, cited above, § 59).

67. The Court finds that it is likewise not necessary to examine the present complaint separately under Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

68. The applicant complained that the decision of the Supreme Court's Plenum of 19 July 2002 had interfered with the exercise of her property rights to her apartment in breach 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."

69. The Government denied that there had been any interference with the applicant's property rights, because the Plenum had not deprived her of her right to reside in the apartment. The Government maintained that the Plenum's decision to grant G.R. co-residence rights had been lawful, because it "ensured the right of a family member to reside at the owner's place after the family relationship had been terminated".

70. The applicant reiterated her complaint.

71. It is undisputed that the applicant had a "possession" for the purposes of Article 1 of Protocol No. 1. At the outcome of the original civil proceedings which ended with the Supreme Court's final decision of 11 January 2002, the applicant was found to be the sole lawful owner and

resident of the apartment and all of G.R.'s claims to the apartment were dismissed. Relying on the final outcome of these proceedings, the applicant could have legitimately expected to have peaceful enjoyment of her possession.

72. The Court reiterates that the quashing of a final judgment which recognised the applicant's right to peacefully enjoy his or her possessions constitutes an interference with that right (see *Brumărescu*, cited above, § 74). In the present case, the Plenum of the Supreme Court quashed the Supreme Court's final decision of 11 January 2002 and granted G.R.'s claim in full. Although after the Plenum's decision the applicant technically retained the title to the apartment, she was now required, *inter alia*, to give up space in the apartment for G.R. to reside, as well as to seek the consent of the latter, as a registered co-resident, for future transactions involving the apartment. The applicant could no longer enjoy unrestricted rights to possess, use and dispose of her property free of all encumbrances, which had been confirmed by the final decision of 11 January 2002. Accordingly, the quashing of the final and binding judicial decision frustrated the applicant's reliance on it and deprived her of the possibility to peacefully enjoy her possession.

73. Article 1 of Protocol No. 1 provides that such interference with the peaceful enjoyment of possessions can be justified only if it is shown, *inter alia*, to be "in the public interest" and "subject to the conditions provided by law". The Court observes that neither the Plenum of the Supreme Court itself nor the Government have sought to offer any justification for the interference that has taken place in the present case. In these circumstances, the Court considers that the quashing of the final domestic decision by way of the additional cassation procedure placed an excessive burden on the applicant and was therefore incompatible with Article 1 of Protocol No. 1 (compare with *Brumărescu*, cited above, §§ 77-79, and *Kot*, cited above, § 33). There has therefore been a violation of that Article.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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."

75. Having been asked to submit her just satisfaction claims in accordance with Rule 60 of the Rules of Court, the applicant replied that she claimed just satisfaction and referred to the original claims she set out in her application form lodged with the Court on 5 September 2002. The Court will therefore have regard to the amounts claimed in the application form.

A. Damage

1. *Pecuniary damage*

76. The applicant claimed 20,000 United States Dollars (USD) in respect of pecuniary damage. According to the applicant, this amount included the value of her apartment (as of 2002) as well as the expenses she incurred in the domestic court proceedings (see below).

77. The Government submitted that the applicant was not entitled to any pecuniary damage because she had sold her apartment in January 2005 and received its sale price.

78. At the outset, the Court accepts that the applicant must have suffered some pecuniary damage due to the restriction of her property rights to the apartment. However, it would be inappropriate to award the applicant the full market value of the apartment as claimed by her, because even though the Plenum's decision of 19 July 2002 resulted in restriction (and diminishment of the value) of her rights to possess, use and dispose of her property, she nevertheless retained the title to the apartment. In the circumstances of the present case, it could be more appropriate to award the applicant, *inter alia*, the difference between the full market value of the apartment at the time of its sale in 2005 and the price for which she sold her title to the apartment (assuming that this price was lower than the actual market value due to the restriction of the applicant's property rights).

79. However, the Court points out that under Rule 60 of the Rules of the Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part. The Court notes that, while the applicant claimed a combined amount of USD 20,000 for the value of the apartment and her expenses in the domestic proceedings, she failed to itemise this claim and specify the part of the claim which corresponded to the exact market value of the apartment. She also failed to submit any documents or evidence which would support her claims in respect of pecuniary damage.

80. In these circumstances, the Court concludes that the applicant failed to comply with Rule 60 of the Rules of Court and to submit relevant information which would enable the Court to assess the pecuniary damage suffered by her. It therefore rejects the applicant's claim in respect of pecuniary damage.

2. *Non-pecuniary damage*

81. The applicant claimed USD 80,000 in respect of non-pecuniary damage. The Government did not submit any specific comments in this respect.

82. The Court considers that the applicant suffered distress and frustration as a result of the quashing of the judicial decision in her favour under the procedure of additional cassation. However, the amount claimed is excessive. Making its assessment on an equitable basis, the Court awards the applicant 2,000 euros in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

83. As noted above, the applicant claimed a combined amount of USD 20,000 in respect of both pecuniary damage and costs and expenses in the domestic proceedings.

84. The Government did not comment on this point.

85. The Court again notes that the applicant failed to duly itemise her claims and to specify what portion of the claimed amount corresponded to the costs and expenses which she had allegedly incurred. She also failed to submit any documentary evidence in support of her claim. The Court therefore rejects the applicant's claim in respect of costs and expenses.

C. Default interest

86. 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. *Holds* that there has been a violation of the applicant's right to a court guaranteed by Article 6 § 1 of the Convention in that the final judicial decision was quashed under the procedure of additional cassation;
2. *Holds* that it is not necessary to examine the allegations of procedural unfairness of the additional cassation proceedings;
3. *Holds* that it is not necessary to examine separately the complaint under Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President