CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34640/02
by Leyli RAHMANOVA
against Azerbaijan

The European Court of Human Rights (First Section), sitting on 1 September 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 5 September 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Leyli Pasha qizi Rahmanova (*Leyli Paşa qızı Rəhmanova*), is an Azerbaijani national who was born in 1938 and lives in Baku. She is represented before the Court by Mr N. Abdullayev, a lawyer practising in Baku. The respondent Government was represented by Mr C. Asgarov, Agent of the Republic of Azerbaijan before the Court.

A. The circumstances of the case

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

1. Facts prior to litigation

The applicant owned a three-room apartment in Baku. In 1991, after getting married, the applicant's son and his wife (hereinafter "G.R.") moved in to live in 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.

In 1995, they decided to sell the apartment, divide the proceeds and then live separately. 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.

In 1996, the applicant's son asked her to temporarily register him and his family in her new apartment as co-residents. As he explained, without having proper residence documents, he was unable to get a job. Having agreed with this request, the applicant allowed her son and G.R. to register temporarily, for a term of one year, as co-residents in her apartment. However, pursuant to their earlier agreement, the applicant's son and G.R. never moved in and never lived in this apartment. Later, the applicant successfully applied for their removal from the relevant registration records.

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

2. Original proceedings

In 2000, G.R. filed a lawsuit, claiming a right to reside in the applicant's apartment together 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.

Upon the applicant's appeal, 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 the district court had not assessed all the relevant facts of the case. The case was remitted for re-trial at the first instance.

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.

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.

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 never resided in the disputed apartment. The case was remitted back to the Court of Appeal for re-examination.

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 disposition of the district court's judgment of 8 December 2000 favouring the applicant.

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.

3. Proceedings in the Plenum of the Supreme Court

Not having agreed with the outcome of the proceedings in the domestic courts, G.R. filed an additional cassation request for the review of the Supreme Court's final decision by the Plenum of the Supreme Court (*Azərbaycan Respublikası Ali Məhkəməsinin Plenumu*; hereinafter the "Plenum"). By a letter of 14 May 2002, the Chair 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.

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.

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 national laws, this fact was an insufficient basis for adjudging the case in the applicant's favour. The Plenum further found that the lower courts misapplied the national law and failed to establish the facts necessary for applying the correct 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.

In conclusion, the Plenum "amended" 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.

B. Relevant domestic law and practice

1. Law "On Courts and Judges" of 1997

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 ..."

2. Code of Civil Procedure of the Republic of Azerbaijan of 2000

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."

Article 424.2 lists the grounds which merit the review of the Supreme Court's cassation-instance decision by the Plenum of the Supreme Court. These grounds are present if, *inter alia*, the Supreme Court's decision was drawn up in violation of the formal requirements concerning the contents of a judicial decision, or was based on a legal norm declared as unconstitutional by the Constitutional Court, or if the Supreme Court's ruling infringed the rights and obligations of persons who were not a party to the case.

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. make amendments to 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; ..."

3. Position of the Constitutional Court

In its decision named "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 amend the final decisions of the Supreme Court under the procedure of additional cassation.

The Constitutional Court acknowledged that, according to Article 429.0.2 of CCP, the Plenum of the Supreme Court was empowered to make amendments to the decision of the cassation-instance court. However, such amendments could comprise only matters that were not related to the merits of the case. The Plenum of the Supreme Court could amend 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 the points of fact, it followed that the Plenum of the Supreme Court could not make amendments to the cassation-instance court's decision relying upon the factual circumstances of the case either.

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 must quash the 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. In other words, having 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.

COMPLAINTS

1. The applicant complained under Articles 6 § 1 and 13 of the Convention that her right to a fair trial and an effective remedy had been breached when the Plenum of the Supreme Court "amended" the Supreme Court's decision of 11 January 2002, which had become final. She also contended that the Plenum had no right to review the case after the Supreme

Court's President had rejected G.R.'s request to reopen the proceedings. She was not informed that the case had been referred to the Plenum and was not invited to attend the hearing. Finally, the applicant complained that the Plenum had exceeded its competence by examining the case on the points of fact, as well as by delivering a new judgment on the merits.

2. The applicant further complained that, as a result of the unfair proceedings in the Supreme Court's Plenum, she was deprived of her property rights contrary to Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. Invoking Articles 6 § 1 and 13 of the Convention, the applicant complained that the allegedly unlawful reopening of the proceedings and the decision of the Supreme Court's Plenum of 19 July 2002 violated 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. 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."

As to whether the reopening of the proceedings was lawful, the Government submitted that the domestic law provided for filing an additional cassation appeal directly with the Plenum of the Supreme Court, and not with the President of the Supreme Court. Even if the President of the Supreme Court rejected the request for reopening of the proceedings, the Plenum could nevertheless 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 reopen the proceedings.

The Government further submitted that Article 426.2 of CCP provided for the two-month deadline for filing an additional cassation appeal. However, the domestic law did not establish any time-limits for referring the case to the Plenum after such an appeal had been filed.

In reply, the applicant maintained 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 was unlawful and in breach of her right to a fair trial under Article 6 § 1 of the Convention.

As to the Plenum's competence to amend the Supreme Court's final decision, the Government submitted that the Plenum had not exceeded its competence, because under Article 429 of CCP it was specifically empowered to make such amendments. 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 these facts.

The applicant acknowledged that, in accordance with Article 429 of CCP, the Plenum had a competence to amend the final decision of the Supreme Court. However, she disagreed with the Government as to the scope of amendments that the Plenum was empowered to make under this provision. Specifically, relying on the case-law of the Constitutional Court of Azerbaijan, she argued that the Plenum was empowered to amend the Supreme Court's final decision only when the changes 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, the Plenum must have quashed it and remitted the case to the Court of Appeal for a new examination on the merits.

The applicant further submitted that the Plenum had, in essence, examined the case on the points of fact, which was outside its competence. In its decision, the Plenum gave its own assessment to the facts of the case as well as 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 examination of relevant factual circumstances. In essence, under the disguise of "amendments," 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.

The Court considers, in the light of the parties' submissions, that this part of the application raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. The Court concludes, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

2. The applicant complained that the decision of the Supreme Court's Plenum of 19 July 2002 had violated her property rights under Article 1 of Protocol No. 1 to the Convention. That provision 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 Government denied that there had been any interference with the applicant's property rights. The applicant was not deprived of her right to reside in the apartment. The Plenum's decision to grant G.R. co-residence rights was lawful, because it ensured the right of a family member to reside at the owner's place after the family relationship had been terminated.

The applicant reiterated that, by amending the Supreme Court's final decision in her favour and upholding G.R.'s claims in full, the Plenum of the Supreme Court had interfered with her right to the peaceful enjoyment of her possessions.

The Court considers, in the light of the parties' submissions, that this part of the application raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. The Court concludes, therefore, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President