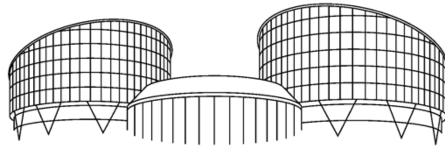

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MAZAHIR JAFAROV v. AZERBAIJAN

(Application no. 39331/09)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Unreasoned judicial courts’ findings refusing to terminate the use of the applicant’s flat by his former family in exchange for compensation • No assessment of an adequate amount of compensation having due regard to various relevant factors • No reasons for not taking into consideration the applicant’s arguments and evidence prima facie relevant to the outcome of the case

STRASBOURG

2 April 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

In the case of Mazahir Jafarov v. Azerbaijan,

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

Gabriele Kucsko-Stadlmayer, *President,*
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having regard to:

the application 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 Mazahir Ismayil oglu Jafarov (*Məzahir İsmayıl oğlu Cəfərov* – "the applicant"), on 1 July 2009;

the decision to give notice of the application to the Azerbaijani Government ("the Government");

the parties' observations;

Having deliberated in private on 10 March 2020,

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

INTRODUCTION

The case concerns alleged breaches of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention arising as a result of allegedly unreasoned decisions by the domestic courts to reject the applicant's request for an order terminating his former family members' rights to reside in his flat in exchange for compensation.

THE FACTS

1. The applicant was born in 1959 and lives in Baku. He was represented by Mr F. Rahimov, a lawyer practising in Azerbaijan.

2. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Əsgərov.

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

4. In 1991 the applicant and his wife, son and daughter ("the family members") took up residence in a State-owned three-room flat on the basis of an occupancy voucher issued by the applicant's employer, a State-owned company.

5. In 1994 the applicant privatised the flat in question and became its owner with the consent of his only family member who was an adult at the time (his wife), who waived any claims to ownership rights at the time of privatisation. All the family members, including the children, had residence rights in respect of the flat (“right of use”).

6. In 2007 the applicant and his wife divorced. After the divorce the applicant and his family members continued to reside in the same flat and had frequent domestic conflicts. According to the applicant, on certain occasions the family members either did not allow him into the flat or insulted him. Because of this situation, eventually the applicant had to move out and reside elsewhere.

7. On an unspecified date in 2008 the applicant’s former wife lodged a claim with the Narimanov District Court against the applicant, seeking a declaration that she had an ownership right to three-quarters of the flat.

8. On an unspecified date in 2008 the applicant lodged a counterclaim against the family members seeking termination of their right of use in relation to the flat, subject to his making a payment of compensation of 6,000 Azerbaijani manats (AZN) to each of them (AZN 18,000 in total). The applicant contended that the proposed amount would be sufficient for the family members to afford comparable alternative accommodation for a period of at least five years.

9. On 24 July 2008 the Narimanov District Court dismissed both the claim by the applicant’s former wife and the applicant’s counterclaim. As regards the applicant’s former wife’s claim, the first-instance court found that the flat did not constitute common property of the applicant and his former wife because it had not been acquired using their joint family income earned during the marriage, but had been allocated to the applicant from the State housing fund and subsequently privatised by him free of charge. At the time of the privatisation of the flat, the former wife had voluntarily waived any right to a share of ownership of the flat.

10. As regards the applicant’s counterclaim, the first-instance court’s reasoning began with a reference to Article 228.2 of the Civil Code, which provided for the possibility of terminating family members’ right of use on the basis of a court decision and subject to the payment of compensation. The court further referred to a decision of the Constitutional Court of 26 September 2007, which stated that such compensation should be sufficient for former family members to live in “suitable alternative accommodation on a continuous basis and for a certain period of time”. The court then held as follows:

> “The amount of compensation proposed by [the applicant] cannot be used for the resolution of the present dispute because it does not correspond to a real market value and is contrary to the mentioned legal acts.”

11. The court did not specify the amount of compensation that would be sufficient. Referring to Articles 14.2, 217.3 and 217.4 of the Code of Civil Procedure ("the CCP"), it concluded as follows:

> "[The claimant and counterclaimant] were unable to present any reliable evidence in support of their claims at the court hearing.
>
> Having assessed the totality of the available evidence, the court considers that the claim and the counterclaim must be rejected as unsubstantiated."

12. The applicant appealed, arguing that the first-instance court had failed to carry out an assessment of what would be an adequate sum of compensation to be paid in his case and had not provided any substantiated reasons for its finding that the proposed compensation was insufficient, in breach of his right to a reasoned decision both under the domestic law and under Article 6 of the Convention, as well as in breach of his property rights. He also argued that, if there was insufficient evidence of the "real market value" in order to determine the compensation, the court could have appointed an expert to carry out a relevant assessment.

13. It appears from the documents in the case file that, during the appellate proceedings, the applicant submitted to the appellate court a letter from an NGO called Property Market Participants, dated 20 September 2008, which stated that, according to their assessment, the current market value of the monthly rent for two rooms of the flat in question was 230 United States dollars (USD) (approximately AZN 187 at the relevant time).

14. On 14 October 2008 the Baku Court of Appeal upheld the first-instance judgment, reiterating the first-instance court's reasoning and holding as follows:

> "Having considered that the amount of compensation proposed by [the applicant] did not correspond to the real market value and was not sufficient for the defendants to afford suitable alternative accommodation on a continuous basis and for a certain period of time, the first-instance court dismissed the counterclaim.
>
> The [appellate] court has also taken into consideration that the flat was originally allocated not only to [the applicant] but taking into account that he had a family of four, that the parties had resided in the flat from the time when it had been allocated, and that currently [the applicant's former family members] have no other accommodation.
>
> For these reasons, [the applicant's appeal] must be dismissed."

15. The Baku Court of Appeal's judgment was silent as to the evidence submitted by the applicant (see paragraph 13 above).

16. The applicant lodged a cassation appeal with the Supreme Court, arguing that the lower courts' judgments were unreasoned. He noted that neither lower court had provided reasons for finding that the proposed amount of compensation was insufficient, and the appellate court had failed to assess the evidence that he had submitted to it and had not provided any

reasons for that failure in its judgment. He reiterated his submission that the amount that he had proposed was sufficient for his family members to reside in alternative accommodation in comparable conditions for at least five years.

17. On 24 February 2009 the Supreme Court upheld the lower courts' judgments, briefly reiterating their finding on insufficiency of the compensation, without expressly responding to the applicant's above-mentioned arguments. In its decision, the Supreme Court referred to Article 228.2 of the Civil Code and the Constitutional Court's decision of 26 September 2007. It then added:

> "Before [the applicant] privatised the flat, all of his family members ... had shared housing rights to it. When they consented to the privatisation of the flat by [the applicant], they retained their rights of use in respect of the flat. In such circumstances, termination of their rights in exchange for compensation is possible only with their agreement."

RELEVANT LEGAL FRAMEWORK

A. The Housing Codes

18. Article 123 of the Housing Code of 8 July 1982 ("the 1982 Housing Code"), as in force at the material time, and in so far as relevant, provided as follows:

> "The family members of the owner of a residential property who have been moved into that property by the owner have a right of use in relation to the residential space of the property in common with the owner, unless any other rights were reserved at the time of their moving in. ... Those persons' right of use of the residential space shall persist in the event of the termination of family relations with the owner of the residential house.
>
> Disputes between the owner and their family members about the manner of use of the residential space and sharing of the expenses shall be decided by the courts."

19. Article 30.4 of the Housing Code of 1 October 2009 ("the 2009 Housing Code") provided as follows:

> "30.4. Unless the owner of the residential space and his or her former family member have agreed otherwise, the former family member's right of use of that residential space does not persist after the termination of family relations with the owner of the residential space. The former family member's right to use the owner's residential space may be retained pursuant to a court order for a specified period of time [in exceptional circumstances where the former family member lacks capacity, legally, financially or otherwise, to acquire rights to other residential space]."

B. The 2000 Civil Code

20. Article 228 of the Civil Code of 1 September 2000 ("the Civil Code"), in so far as relevant, provides as follows:

"228.1. Family members of an owner of an integral part of a residential building and other persons can have a right of use of the building on the condition that such a right has been registered in the state register of immovable property.

228.2. The emergence, implementation terms and termination of a right of use of an integral part of a residential building shall be established by way of a notarised written agreement concluded with the owner. In the absence of an agreement on the termination of the right of use of an integral part of a residential building, this right may be terminated on the basis of a judicial claim by the owner subject to payment of appropriate compensation at the market price."

C. The 2000 Code of Civil Procedure

21. The following are the relevant provisions of the CCP. The text of Article 371 set out below is as it was in force at the relevant time, before the amendment of 26 May 2009:

"Article 14. Principles of judicial examination of a case

...

14.2. The court shall examine and use evidence presented only by the parties. ...

...

Article 77. Burden of proof

77.1. Each party shall prove the circumstances to which it refers as grounds for its claims and objections.

...

77.3. If it is not possible to examine the case on the basis of the evidence available in the case file, the court shall be entitled to propose that the parties submit necessary supplementary evidence.

...

Article 97. Appointment of an expert examination by the court

97.1. For the purpose of clarification of matters requiring specialised knowledge when examining the case, the court may order an expert examination upon request by a party or of its own initiative.

...

Article 217. Lawfulness and substantiation of a judgment

217.1. The judgment of a court must be lawful and substantiated.

217.2. The judgment shall be delivered by reference to the substantive law in force at the time the legal dispute arose and the procedural law in force at the time of the examination of the case.

217.3. The judgment shall be substantiated in accordance with the actual circumstances established in respect of the case and the mutual relations between the parties.

217.4. The court (the judge) shall substantiate its (his or her) judgment only with the evidence examined at the court hearing.

...

Article 371. Submission of new evidence

371.1. Parties to the case may submit new evidence to the court of appeal.

371.2. The court of appeal may reject new evidence which a party was unable to submit to the first-instance court in the event that it deems such new evidence as either belated or aimed at delaying the appellate procedure or as having not been submitted [to the first-instance court] owing to gross negligence ...

Article 372. Limits of review by the court of appeal

372.1. The court of appeal, having full competence, shall examine the case on its merits on the basis of the evidence available in the case file and any evidence submitted in addition.

372.2. Additional facts and evidence shall be accepted by the court if the party submitting it can prove the impossibility of the earlier submission of such evidence to the first-instance court for reasons beyond his control ...”

D. Case-law of the Constitutional Court

22. A decision of the Constitutional Court of 27 July 2001, in so far as relevant, provided as follows:

“... Disputes in connection with legal relations arising after 1 September 2000 must be decided in accordance with the rules set out in Articles 228.1 and 228.2 of the Civil Code and disputes in connection with legal relations arising prior to that date shall be decided in accordance with the rules set out in Article 123 of the [1982] Housing Code.”

23. A further decision of the Constitutional Court of 26 September 2007 “on reviewing the compliance with the Constitution and laws of the Republic of Azerbaijan of the decision of the Civil Panel of the Supreme Court of the Republic of Azerbaijan of 31 March 2006 concerning the complaint by R. Agalarov” (“the Agalarov case”) clarified its earlier position (as outlined above), ruling that in disputes specifically concerning the termination of a right of use of a residential space, Article 228.2 of the Civil Code was applicable even in cases where the right of use had arisen before 1 September 2000, because it afforded a higher level of regulation and protection to the rights of both the owner and the user than Article 123 of the 1982 Housing Code, which lacked any provisions concerning the termination of the right of use. The decision provided the following reasoning:

“Where family members (or equivalent persons) reside in the same flat, it is possible for one (or several) of them to have the right of ownership of the flat (which includes in itself a right of use of the residential space), while the others have only a right of use of the residential space. When resolving disputes between those individuals,

regard must be had to the nature of the right of ownership and that of the right of use of a residential space, the fair balance between them and the provisions of the legislation ... regulating the manner of exercise [of those rights].

At the outset, it must be specifically noted that the right of ownership and the right of use of a residential space constitute different legal categories ...

The right to use a residential space despite the will of its owner was previously recognised in the [1982] Housing Code. At that time the Republic of Azerbaijan was a constituent republic of the former USSR; its legislation was part of the Soviet legislation and was predominantly aimed at the protection of State property ...

The right of ownership ... comprises not only the owner's wide legally established powers (to possess the property that belongs to him, to use the property as he wishes, depending on its intended purpose, in order to meet his requirements, and to determine the legal fate of the property according to his will), but also the power to remove any third party interference with the owner's State-guaranteed dominion over his property without breaching the rights and legally protected interests of others within the framework of the applicable legislation, and, when doing so, to act as he deems fit in the light of his interests ...

Customarily, the right of use of a residential space, depicted as a right to live in a flat, house or other dwelling, is one element of the right to housing. The right to housing ... is a long-established right in the legislation of the Republic of Azerbaijan.

The right to housing is mainly ensured in such ways as allocation of a residential space from the State housing fund under the procedures ... and rules provided by law, as well as taking possession of a residential space from its owner under mutually agreed terms (such as a lease, rent-free use, etc.) or its acquisition from the owner in exchange for value (by means of a sale and purchase agreement, an in-kind exchange, etc.) or without charge (by means of an inheritance, a gift, a lottery, etc.) ...

... [As regards the resolution of disputes arising in connection with the exercise of the right of ownership and the right of use of a residential space,] the position of the Constitutional Court is that ... both rights should be ensured by way of striking a fair balance between them ...

... [T]he possibility of applying the rule stipulated in Article 228.2 of the Civil Code, about the termination of the right of use of a residential space subject to payment of compensation, to relationships that arose earlier [before the Civil Code entered into force] and that are continuing is not contrary to the position of the Constitutional Court as set out in its decision of 27 July 2001 and supplements it ...

... It must be taken into account that, while the [1982] Housing Code does not provide for compensation to be paid for the termination of the right of use of a residential space, Article 228.2 of the Civil Code ... provides for a higher level of protection of the parties' rights and legally protected interests ...

... Although compensation does not give the user a right to claim a division of the property or payment of a certain proportion of its value, it does not result in the simple termination of the right of use of the residential space, but in such a replacement of it as to give the user an opportunity to live in suitable alternative accommodation at the expense of the owner on a continuous basis and for a certain period of time under conditions similar to those of the previous property."

24. A decision of 8 October 2013, in so far as relevant, provided as follows:

> "When examining the issues in connection with the right of the former family member to use a residential space after the termination of family relations with the owner of that residential space, the provisions of Article 228 of the Civil Code must be applied to such relations arising before 1 October 2009 and the provisions of Article 30.4 of the [2009] Housing Code must be applied to relations arising after that date."

25. A decision of 12 July 2016 was delivered following an application by the Baku Court of Appeal requesting further interpretation of Article 228.2 of the Civil Code in the light of a number of provisions of the law on civil procedure. The application was made in connection with a civil case where the appellate court had initially rejected an amended claim by the claimant proposing payment of a higher amount of compensation than that offered in the initial claim (rejected by the first-instance court), based on a finding that changing the amount of the proposed compensation would amount to changing the subject matter of the claim at the appellate stage of the proceedings, which was prohibited by the rules of civil procedure. This led the claimant to initiate a separate set of proceedings, in which he offered a higher amount of compensation in exchange for the termination of the right of use. When those proceedings also reached the appellate stage, the Baku Court of Appeal decided to refer the matter to the Constitutional Court for interpretation. In its application, the Court of Appeal noted that "there existed no unified approach in the court practice as to whether the amount of compensation referred to in Article 228.2 of the Civil Code constituted part of the subject matter of the claim" and that that situation "created difficulties in examining such cases within a reasonable time and caused a breach of the principle of legal certainty".

The Constitutional Court's decision of 12 July 2016, in so far as relevant, provided as follows:

> "The amount of compensation for the termination of the right of use of a residential space as stipulated in Article 228.2 of the Civil Code is not part of the subject matter of the claim.
>
> When examining cases, the first-instance court shall determine the amount of the compensation in accordance with the market price regardless of whether the amount of compensation has been indicated in the claim or not.
>
> When granting a claim for termination of the right of use in exchange for compensation in line with the market price, the court shall consider the owner's willingness to pay that amount."

THE LAW

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

26. The applicant complained that the domestic courts had delivered unreasoned judgments, in breach of the requirements of Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

27. The Court notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

28. The applicant submitted that he was neither able to use his flat nor to dispose of it while his former family members continued to reside there. Despite his lawful claim to have their right of use terminated in exchange for compensation – which he had proposed at AZN 6,000 for each family member, which would have been sufficient to enable them to live in suitable alternative accommodation for at least five years – the domestic courts had refused to terminate the family members’ right of use in relation to his flat, having found, without providing any reasoning for that finding, that the compensation was insufficient and unlawful. The courts had not examined any evidence, such as the valuation prepared by the NGO, Property Market Participants, that he had submitted as additional evidence to the Baku Court of Appeal.

29. The applicant also argued that the applicable domestic law, including its interpretation by the Constitutional Court as at the time of the events in question, was imprecise and unforeseeable, creating difficulties in its application by the courts not only in his case but in many others. In particular, the expression “for a certain period of time”, used by the Constitutional Court in its decision of 26 September 2007 in defining the criteria for calculating the compensation under Article 228.2 of the Civil Code, was unclear.

30. The Government submitted that the domestic courts had examined the applicant’s claims and evidence and had delivered reasoned judgments relying on the domestic legal provisions. The courts had correctly dismissed the applicant’s claim owing to the fact that he had not been able to prove that the proposed compensation of AZN 6,000 was sufficient for each member of his family to live in suitable alternative accommodation on a continuous basis.

31. The Government further submitted that the question of the termination of the right of use of property had frequently been raised before the legislator and the judicial authorities in Azerbaijan. The Government referred to the decisions of the Constitutional Court dated 27 July 2001,

26 September 2007, 8 October 2013 and 12 July 2016 and submitted that, in accordance with the Constitutional Court's approach, such cases should be examined individually and the amount of compensation determined on a case-by-case basis, having due regard to the specificities of each case and to the principle of social justice.

32. Without providing any supporting examples of relevant domestic court judgments, the Government also submitted that, when deciding on the termination of the right of use subject to payment of compensation, the domestic courts took into account the following factors, *inter alia*: the length of time for which the person in question had had the right to use the residential space; any contribution made by him or her to construction, repairs or renovation of the residential space; the grounds on which the right of use had arisen; whether the person in question had had any other residential space before moving into the space concerned and whether he or she had another residential space to move into after termination of the right of use; the surface area and the condition of the residential space available to each resident; the territorial location of the residential space; the amount of rent for a one-room flat or a comparable flat in the area the residential space was located; and the personal financial situation of the owner offering compensation and of the person to whom compensation was offered. Having regard to the above factors, the courts would decide whether the proposed amount of compensation was sufficient.

2. *The Court's assessment*

(a) General principles

33. The Court reiterates that, under Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It is not the Court's task to take the place of the domestic courts and it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 186, 6 November 2018). The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Moreira Ferreira*

v. Portugal (no. 2) [GC], no. 19867/12, § 83, 11 July 2017, with further references).

34. The Court also reiterates that, in view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal (see *Carmel Saliba v. Malta*, no. 24221/13, § 65, 29 November 2016, with further references).

35. According to the Court's established case-law – reflecting a principle linked to the proper administration of justice – judgments of courts and tribunals should adequately state the reasons on which they are based. Without requiring a detailed answer to every argument advanced by the complainant, this obligation to give reasons presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see *Moreira Ferreira (no. 2)*, cited above, § 84; *Cihangir Yıldız v. Turkey*, no. 39407/03, § 42, 17 April 2018; and *Orlen Lietuva Ltd. v. Lithuania*, no. 45849/13, § 82, 29 January 2019). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz*, cited above, § 26). For this purpose, it is 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 (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A; *Borovská and Forrai v. Slovakia*, no. 48554/10, § 57, 25 November 2014; and *Tibet Menteş and Others v. Turkey*, nos. 57818/10 and 4 others, § 48, 24 October 2017).

36. It transpires from the above-mentioned case-law that a domestic judicial decision cannot be qualified as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court, resulting in a "denial of justice" (see *Moreira Ferreira (no. 2)*, cited above, § 85).

(b) Application of those principles in the present case

37. In the present case, in order to assess the extent to which the domestic courts were required to provide reasons for their decisions in the case before them and whether they complied with that duty, the Court considers it necessary to first have regard to the legal basis for the applicant's claim under the domestic law.

38. The claim was examined on the basis of Article 228.2 of the Civil Code, which provided for the termination by means of a court decision of a right of use held by former family members in respect of residential space, a

right which, in the case of the applicant's former family members, had originally arisen under the provisions of Article 123 of the 1982 Housing Code. Article 228.2 of the Civil Code provided that, in the absence of an agreement between the parties, a right of use could be terminated by a court decision, subject to the payment of "appropriate compensation at the market price". According to the interpretation of that provision given by the Constitutional Court in the Agalarov case, such compensation should give the user the opportunity to live in suitable alternative accommodation at the expense of the owner on a continuous basis and for a certain period of time under conditions similar to those of the previous property (see paragraph 23 above).

39. As noted by the applicant (see paragraph 29 above), Article 228.2 of the Civil Code, including its interpretation as given by the Constitutional Court, did not lay down precise guidelines for the calculation of the compensation. It was thus up to the courts dealing with a particular case to determine an adequate amount of compensation having regard to case-specific circumstances. Indeed, as confirmed by the Government's submissions, the amount of compensation in cases concerning the termination of the right of use was to be determined by the domestic courts on a case-by-case basis, having due regard to the specificities of each case and to the principle of social justice, taking into account a number of relevant case-specific factors (see paragraph 32 above). The Court notes that this approach has also been expressly reiterated by the Constitutional Court, particularly in its decision of 12 July 2016, where it held that the amount of compensation did not form part of the subject matter of the claim (the subject matter simply being the request to terminate the right of use) and noted that the domestic courts were to determine that amount in each individual case even when no specific amounts had been indicated in the claim itself (see paragraph 25 above).

40. The Government have not submitted any information as to what type of evidence the domestic courts would normally expect claimants to present in support of their claims based on Article 228.2 of the Civil Code in line with the existing domestic judicial practice. Neither does the Constitutional Court's case-law clarify this matter. Given that the amount of compensation did not itself form part of the subject matter of the claim, it has not been made clear to the Court to what extent the burden to prove the reasonableness of the compensation offered lay with the claimant and to what extent the domestic courts examining claims of this type could use their power to seek additional evidence or expert opinions of their own initiative, under, for example, Articles 77.3 or 97.1 of the CCP (see paragraph 21 above). However, in any event, given that the duty of the courts assessing an adequate amount of compensation was to ensure that a fair balance was struck between the owner's property right and the housing right of the person whose "right of use" of the owner's residential space was

to be terminated (see the Constitutional Court's decision in the Agalarov case in paragraph 23 above), any relevant arguments advanced by the parties regarding the amount of the compensation and any supporting evidence submitted by them would potentially be decisive for the outcome of the case. Such arguments and evidence, in principle, would require a reasoned response by the court assessing the amount of compensation.

41. In his submissions to the domestic courts, the applicant proposed an amount of compensation that he considered reasonable and that he would be prepared to pay and, in support of his proposal, he argued that this amount would cover his former family members' rent in comparable accommodation for a continuous period of at least five years. The Court notes that the only evidence as to the market value produced by the applicant during the proceedings was the letter by the NGO, Property Market Participants, which apparently specialised in processing information about real estate prices (see *Akhverdiyev v. Azerbaijan* (just satisfaction), no. 76254/11, § 11, 21 March 2019). The applicant did not submit that evidence to the first-instance court. However, as can be seen from the case material, he submitted it to the Baku Court of Appeal at the appellate stage of the proceedings, and the Court will have regard to the manner in which that court dealt with that evidence in due course below.

42. The first-instance court rejected the applicant's claim, holding that the amount of compensation proposed "[did] not correspond to the real market value" and was not in compliance with the domestic legislation.

43. However, owing to the vagueness and brevity of the first-instance court's judgment, it is impossible to ascertain whether the court dismissed the applicant's claim having actually assessed the amount of adequate compensation and subsequently finding that the amount proposed by the applicant was insufficient, but failing to explain its reasons for making such a finding (see paragraph 10 above), whether it dismissed the claim fully or partly for a lack of reliable evidence submitted by the applicant (see paragraph 11 above), or whether it did not carry out any assessment at all. The first-instance court did not provide any reasons for its conclusion that the proposed amount of compensation "did not correspond to the market value" and did not provide an indication of what that market value was.

44. In such circumstances, the Court finds that the first-instance judgment lacked adequate reasoning.

45. The Court will therefore further examine whether adequate reasoning was provided by the higher courts following the applicant's appeals. In that connection, the Court reiterates that, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see *García Ruiz*, cited above, § 26) and that it may be acceptable under Article 6 § 1 of the Convention for the national superior courts (usually courts of cassation examining cases on points of law) to dismiss a complaint by mere reference to the relevant legal

provisions governing such complaints if the matter raises no fundamentally important legal issue (see *Baydar v. the Netherlands*, no. 55385/14, § 46, 24 April 2018, with further references). However, in the Court's view, the above principle does not hold true in the present case where, as mentioned above, the lower court did not provide adequate reasons for its decision. The Court also notes, in this connection, that in the present case the Baku Court of Appeal did have the competence to fully review the merits of the case on points of both fact and law.

46. As noted above, the applicant submitted new evidence in support of his claim to the Baku Court of Appeal, for the purpose of proving that the proposed compensation was adequate. Under the rules of civil procedure applicable at the material time, new evidence could be produced at the appellate stage of the proceedings (see Articles 371.1 and 372.1 of the CCP cited in paragraph 21 above). However, the Baku Court of Appeal's judgment was silent in respect of the evidence submitted by the applicant, making it impossible to ascertain whether it actually took it into consideration but failed to mention the specific reasons for not crediting it, or whether it implicitly refused to admit that evidence based on the relevant provisions of the CCP (such as, for example, Articles 371.2 and 372.2 of the CCP, and compare also *Cihangir Yıldız*, cited above, § 49). Neither did the Supreme Court respond to the applicant's express complaint that the Baku Court of Appeal had failed to take into consideration the evidence presented by him (see paragraph 16 above).

47. Given that the evidence concerning rental costs of similar accommodation was highly relevant for the assessment of adequate compensation in the present case, the Baku Court of Appeal was required under the Convention to provide a reasoned response to the applicant's submissions with regard to that evidence.

48. Like the text of the first-instance judgment, the text of the Baku Court of Appeal's judgment does not demonstrate that that court had actually carried out any assessment of an adequate amount of compensation, having due regard to the various relevant case-specific factors listed by the Government (see paragraph 32 above). It is true that the Baku Court of Appeal mentioned that, in dismissing the appeal, it had had regard to three factors: (i) that the flat had originally been allocated on the basis of the size of the family; (ii) that the parties had resided in the flat from the time when it had been allocated; and (iii) that the applicant's former family members had no other accommodation (see paragraph 14 above). However, it failed to provide any explanation as to how those factors led it to endorse the first-instance court's finding that the proposed compensation amount was insufficient and contrary to the legislation.

49. Moreover, for determining the "market value" in order to set the level of compensation, there are more relevant factors, such as the surface area and condition of the residential space in question, its territorial

location, the amount of rent for comparable properties, the personal financial situations of the parties, and so on. However, none of the domestic courts' judgments ever mentioned any of these factors.

50. Furthermore, both the first-instance and the appellate courts also failed to respond to the applicant's argument concerning the length of time (five years) which, in his view, would be considered reasonable for the purposes of calculating the compensation in his particular case. In such circumstances, it is impossible to ascertain whether the courts considered the applicant's argument as to the length of time but failed to mention their reasons for finding it inadequate or irrelevant, or whether they simply neglected to consider this issue at all in their assessment. As the Constitutional Court's decision in the Agalarov case did not specify the exact period of time which was to be covered by the compensation and left that matter to be assessed on a case-by-case basis, the courts in the present case were also required to respond to this submission by the applicant.

51. Lastly, as to the reasons given by the Supreme Court for its decision, the Court notes that the Supreme Court did not respond to the relevant arguments put forward by the applicant concerning the lack of adequate reasoning by the lower courts, but it instead endorsed the lower courts' judgments by first reiterating their findings and then adding a completely new reasoning that appeared to be contrary to Article 228.2 of the Civil Code. The Supreme Court reasoned that, because the applicant's former family members had had a right to use the flat before it was privatised, the termination of that right was possible only with their agreement (see paragraph 17 above). This reasoning does not appear to be in line with the second sentence of Article 228.2 of the Civil Code, based on which the claim was decided, which provided for the termination of the right of use by way of a court decision, specifically in situations where there was no agreement between the holders of that right and the owner of the residential space. That provision did not provide for any exceptions that depended on when the rights of ownership and of use arose relative to each other. The Supreme Court neither held that Article 228.2 of the Civil Code was inapplicable nor provided any legal basis for the additional reasoning that contradicted the provisions of that Article.

52. In sum, the Court considers that the domestic courts' decisions in the present case lacked reasoning in relation to their finding that the amount of compensation proposed was insufficient and not in compliance with the legislation, and also lacked any reasons for not taking into consideration the applicant's arguments and the evidence produced by him, which prima facie appeared to be relevant to the outcome of the case.

53. In light of the above considerations, the Court finds that the applicant's right to a reasoned decision was infringed in the present case. There has accordingly been a violation of Article 6 § 1 of the Convention.

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

54. The applicant complained that the dismissal of his claim by the domestic courts had constituted a violation of his right to peaceful enjoyment of his possessions. He relied on 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."

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

56. As to the merits, the Court considers that the complaint raises a number of issues, including whether a fair balance was struck between the demands of the general interest of the community (in relation to the protection of the former family members' housing rights) and the requirement of the protection of the individual's fundamental rights (with regard to the applicant's right to property).

57. However, having regard to the finding relating to Article 6 § 1 (see paragraph 53 above), and also noting that the present complaint is based on essentially the same arguments and that the relevant domestic legislation has since changed (see paragraphs 19 and 24 above), the Court considers that it is not necessary to examine separately whether, in this case, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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."

59. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

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* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 2 April 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Gabriele Kucsko-Stadlmayer
President