GRAND CHAMBER

DECISION

Application no. 40167/06
Minas SARGSYAN
against Azerbaijan

The European Court of Human Rights, sitting on 14 December 2011 as a Grand Chamber composed of:

Nicolas Bratza, *President,*
Jean-Paul Costa,
Christos Rozakis,
Françoise Tulkens,
Josep Casadevall,
Nina Vajić,
Corneliu Bîrsan,
Peer Lorenzen,
Boštjan M. Zupančič,
Elisabet Fura,
Alvina Gyulumyan,
Khanlar Hajiyev,
Egbert Myjer,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou,
Luis López Guerra, *judges,*
and Michael O'Boyle, *Deputy Registrar,*

Having regard to the above application lodged on 11 August 2006,

Having regard to the decision of 11 March 2010 by which the Chamber of the First Section to which the case had originally been assigned relinquished its jurisdiction in favour of the Grand Chamber (Article 30 of the Convention),

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

Having regard to the comments submitted by the Armenian Government,

Having regard to the oral submissions of the parties and the third party at the hearing on 15 September 2010,

Having deliberated on 15, 16 and 22 September 2010 and on 14 December 2011 decides, on the last-mentioned date as follows:

THE FACTS

1. The applicant, Mr Minas Sargsyan, is an Armenian national who was born in 1929 and died in 2009. His widow, Lena Sargsyan, born in 1936 and their children, Vladimir, Tsovinar and Nina Sargsyan, born in 1957, 1959, and 1966 respectively, have expressed the wish to pursue the application on his behalf. The applicant is represented before the Court by Ms N. Gasparyan and Ms K. Ohanyan, lawyers practising in Yerevan. The Azerbaijani Government ("the Government") are represented by their Agent, Mr C. Asgarov.

2. At the oral hearing on 15 September 2010 the applicant was further represented by Ms N. Gasparyan and Mr. P. Leach, counsel, assisted by Ms K. Ohanyan and Mr A. Aloyan.

3. The respondent Government were represented by their Agent, Mr C. Asgarov, Mr M. Shaw, QC, and Mr G. Lansky, counsel, assisted by Mr H. Tretter and Mr O. Gvaladze.

4. The Armenian Government, who had made use of their right to intervene under Article 36 of

the Convention, were represented by their Agent, Mr G. Kostanyan, assisted by Mr E. Babayan, Ms S. Sahakyan and Mr S. Avakian.

A. The circumstances of the case

5. The facts of the case are disputed by the parties and may be summarised as follows on the basis of the information available to the Court, without prejudice to the merits of the case.

1. Background

6. At the moment of the dissolution of the USSR in December 1991, the Nagorno-Karabakh Autonomous Oblast ("the NKAO") was an autonomous province of the Azerbaijan Soviet Socialist Republic ("the Azerbaijan SSR"). Situated within the territory of the Azerbaijan SSR, it covered 4,388 sq. km. There was at that time no common border between Nagorno-Karabakh and the Armenian Soviet Socialist Republic ("the Armenian SSR"), which were separated by Azerbaijani territory, at the shortest distance by the district of Lachin, including a strip of land often referred to as the "Lachin corridor", less than ten kilometres wide.

7. According to the USSR census of 1989, the NKAO had a population of around 189,000, consisting of 77% ethnic Armenians and 22% ethnic Azeris, with Russian and Kurdish minorities.

8. In early 1988 demonstrations were held in Stepanakert, the regional capital of the NKAO as well as in the Armenian capital of Yerevan, demanding the incorporation of Nagorno-Karabakh into Armenia. On 20 February 1988 the Soviet of the NKAO appealed to the Supreme Soviets of the Armenian SSR, Azerbaijan SSR and the USSR that the NKAO be allowed to secede from Azerbaijan and join Armenia. The request was rejected by the Supreme Soviet of the USSR on 23 March. In June it was also rejected by the Supreme Soviet of Azerbaijan whereas its counterpart in Armenia voted in favour of unification.

9. Throughout 1988 the demonstrations calling for unification continued. The district of Lachin was subjected to roadblocks and attacks. The clashes led to many casualties and refugees, numbering hundreds of thousands on both sides, flowed between Armenia and Azerbaijan. As a consequence, on 12 January 1989 the USSR Government placed the NKAO under Moscow's direct rule. However, on 28 November of that year, control of the province was returned to Azerbaijan. A few days later, on 1 December, the Supreme Soviet of the Armenian SSR and the Nagorno-Karabakh regional council adopted a joint resolution, "On the reunification of Nagorno-Karabakh with Armenia".

10. In early 1990, following an escalation of the conflict, Soviet troops arrived in Baku and Nagorno-Karabakh, and the latter province was placed under a state of emergency. Violent clashes between Armenians and Azeris continued, however, with the occasional intervention by Soviet forces.

11. On 30 August 1991 Azerbaijan declared independence from the Soviet Union. This was subsequently formalised by means of the adoption of the Constitutional Act on the State Independence of 18 October 1991. On 2 September 1991 the Soviet of the NKAO announced the establishment of the "Nagorno-Karabakh Republic" (hereinafter "the NKR"), consisting of the territory of the NKAO and the Shahumyan district of Azerbaijan, and declared that it was no longer under Azerbaijani jurisdiction. On 26 November 1991 the Azerbaijani Parliament abolished the autonomy previously enjoyed by Nagorno-Karabakh. In a referendum organised in Nagorno-Karabakh on 10 December 1991, 99.9% voted in favour of secession. However, the Azeri population boycotted the referendum. In the same month, the Soviet Union was dissolved and Soviet troops began to withdraw from the region. Military control of Nagorno-Karabakh was rapidly passing to the Karabakh Armenians. On 6 January 1992 the "NKR" having regard to the results of the referendum, reaffirmed its independence from Azerbaijan.

12. In early 1992 the conflict gradually escalated into full-scale war. By the end of 1993, ethnic Armenian forces had gained control over almost the entire territory of the former NKAO as well as seven adjacent Azerbaijani regions (Lachin, Kelbajar, Jabrayil, Gubadly and Zangilan and substantial parts of Agdam and Fizuli).

13. On 5 May 1994 a ceasefire agreement (the Bishkek Protocol) was signed by Armenia, Azerbaijan and the "NKR" following Russian mediation. It came into effect on 12 May.

14. According to a Human Rights Watch report (*Seven years of Conflict in Nagorno-Karabakh*,

December 1994), between 1988 and 1994 an estimated 750,000-800,000 Azeris were forced out of Nagorno-Karabakh, Armenia, and the seven Azerbaijani districts surrounding Nagorno-Karabakh. According to information from Armenian authorities, 335,000 Armenian refugees from Azerbaijan and 78,000 internally displaced persons (from regions in Armenia bordering Azerbaijan) have been registered.

2. Current situation

15. According to the Armenian Government, the "NKR" controls 4,061 sq. km of the former Nagorno-Karabakh Autonomous Oblast. It appears that the occupied territory of the seven surrounding districts in total amount to 7,409 sq. km (see *Nagorno-Karabakh: Viewing the Conflict from the Ground*, International Crisis Group, Europe Report No. 166, 11 September 2005, p. 1).

16. Estimates of today's population of Nagorno-Karabakh vary between 120,000 and 145,000 people, 95% being of Armenian ethnicity. Virtually no Azerbaijanis remain.

17. No political settlement of the conflict has so far been reached. The self-proclaimed independence of the "NKR" has not been recognised by any State or any international organisation. Negotiations for a peaceful solution have been carried out under the auspices of the OSCE (Organization for Security and Co-operation in Europe) and its so-called Minsk Group. Several proposals for a settlement have failed. In Madrid in November 2007 the Group's three Co-Chairs – France, Russia and the United States – presented to Armenia and Azerbaijan a set of Basic Principles for a settlement. The Basic Principles, which later have been updated, call, *inter alia*, for the return of the territories surrounding Nagorno-Karabakh to Azerbaijani control, an interim status for Nagorno-Karabakh providing guarantees for security and self-governance, a corridor linking Armenia to Nagorno-Karabakh, a future determination of the final legal status of Nagorno-Karabakh through a legally binding referendum, the right of all internally displaced persons and refugees to return to their former places of residence, and international security guarantees that would include a peacekeeping operation. The idea is that the endorsement of these principles by Armenia and Azerbaijan would enable the drafting of a comprehensive and detailed settlement. Following intensive shuttle diplomacy by Minsk Group diplomats and a number of meetings between the Presidents of the two countries in 2009, the process lost momentum in 2010. So far the parties to the conflict have not signed a formal agreement on the Basic Principles.

18. On 24 March 2011 the Minsk Group presented a "Report of the OSCE Minsk Group Co-Chairs' Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh", the executive summary of which reads as follows:

> "The OSCE Minsk Group Co-Chairs conducted a Field Assessment Mission to the seven occupied territories of Azerbaijan surrounding Nagorno-Karabakh (NK) from October 7-12, 2010, to assess the overall situation there, including humanitarian and other aspects. The Co-Chairs were joined by the Personal Representative of the OSCE Chairman-in-Office and his team, which provided logistical support, and by two experts from the UNHCR and one member of the 2005 OSCE Fact-Finding Mission. This was the first mission by the international community to the territories since 2005, and the first visit by UN personnel in 18 years.
>
> In traveling more than 1,000 kilometers throughout the territories, the Co-Chairs saw stark evidence of the disastrous consequences of the Nagorno-Karabakh conflict and the failure to reach a peaceful settlement. Towns and villages that existed before the conflict are abandoned and almost entirely in ruins. While no reliable figures exist, the overall population is roughly estimated as 14,000 persons, living in small settlements and in the towns of Lachin and Kelbajar. The Co-Chairs assess that there has been no significant growth in the population since 2005. The settlers, for the most part ethnic Armenians who were relocated to the territories from elsewhere in Azerbaijan, live in precarious conditions, with poor infrastructure, little economic activity, and limited access to public services. Many lack identity documents. For administrative purposes, the seven territories, the former NK Oblast, and other areas have been incorporated into eight new districts.
>
> The harsh reality of the situation in the territories has reinforced the view of the Co-Chairs that the status quo is unacceptable, and that only a peaceful, negotiated settlement can bring the prospect of a better, more certain future to the people who used to live in the territories and those who live there now. The Co-Chairs urge the leaders of all the parties to avoid any activities in the territories and other disputed areas that would prejudice a final settlement or change the character of these areas. They also recommend that measures be taken to preserve cemeteries and places of worship in the territories and to clarify the status of settlers who lack identity documents. The Co-Chairs intend to undertake further missions to other areas affected by the NK conflict, and to include in such missions experts from relevant international agencies that would be involved in implementing a peace settlement."

3. The applicant and the property allegedly owned by him in the Shahumyan region

19. The applicant, an ethnic Armenian, states that he and his family used to live in the village of Gulistan in the Shahumyan region of the Azerbaijan SSR. He claims to have had a house and outhouses there.

20. Geographically, Shahumyan shared a border with the NKAO and was situated to the north of it. The region did not form part of the NKAO, but was later claimed by the "NKR" as part of its territory (see above paragraph 11). According to the applicant, 82% of the population of Shahumyan had been ethnic Armenians prior to the conflict.

21. In January 1991 Shahumyan was abolished as a separate administrative region and was formally incorporated into the present-day Goranboy region of the Republic of Azerbaijan.

22. In April-May 1991 the USSR Internal Forces and the special-purpose militia units ("the OMON") of the Azerbaijan SSR launched a military operation with the stated purpose of "passport checking" and disarming local Armenian militants in the region. However, according to various sources, the government forces, using the official purpose of the operation as a pretext, expelled the Armenian population of a number of villages in the Shahumyan region, thus forcing them to leave their homes and flee to Nagorno-Karabakh or Armenia. The expulsions were accompanied by arrests and violence towards the civilian population. It is not clear whether Gulistan, the applicant's village, was affected by these events, as the applicant appears to have remained in the village after the operation was aborted.

23. However, when the conflict escalated into a full-scale war, Gulistan came under direct attack by Azerbaijani forces. From 12 to 13 June 1992 the village was heavily bombed. The entire population of the village, including the applicant and his family members, fled in fear for their lives.

24. It is not clear whether the applicant's house has been destroyed. The applicant's submissions in that respect are contradictory: In his application he stated that the house had been destroyed during the attack but also alleged that he had been informed later that other persons were illegally occupying it.

25. The applicant and his family fled to Armenia. Subsequently, the applicant and his wife lived as refugees in Erevan. In 2002 the applicant obtained Armenian citizenship. He was seriously ill from 2004. He died on 13 April 2009 in Erevan.

26. The parties' positions differ in respect of the applicant's residence and possessions in Gulistan and in respect of the current situation obtaining in Gulistan.

(a) The applicant's position

27. The applicant maintained that he had lived in Gulistan for most of his life until his forced displacement in 1992. In support of this claim he submitted a copy of his former Soviet passport issued in 1979, from which it can be seen that the applicant was born in Gulistan. He also submitted his marriage certificate, which shows that he and his wife, who was also born in Gulistan, got married there in 1955. In addition, the applicant asserted that having grown up in Gulistan, he left for some years to complete his military service and to work in the town of Sumgait. A few years after his marriage he returned to Gulistan, where he lived until June 1992.

28. In respect of his house the applicant submitted a copy of an official certificate ("technical passport") when he lodged the application. According to that document, dated 20 May 1991, a two-storey house in Gulistan and outhouses of a total area of 167 sq. m and 2,160 sq. m of land were registered in the applicant's name. Furthermore he submitted a detailed plan of the main house.

29. Of the 167 sq. m on which the house stood, 76 sq. m were occupied by the main house and 91 by various outhouses including a cow-shed. Of the 2,160 sq. m of land 1,500 were a fruit and vegetable garden. The document contains information of a technical nature (for instance the building materials used) concerning the main house and the outhouses.

30. In addition, the applicant explained that he had obtained the land by permission of the Village Council to divide his father's plot of land between him and his brother. The decision was recorded in the Village Council's register. With the help of relatives and friends, he and his wife built their house on that plot of land in 1962-63. In support of his claims he submitted written statements of eight witnesses, family members and former neighbours and friends from Gulistan. Furthermore, the

applicant explained that he had been a secondary school teacher in Gulistan and had earned his living partly from his salary and partly from farming and stock-breeding on his land while his wife had been working at the village's collective farm since the 1970s.

31. Regarding the current situation in Gulistan, the applicant asserted that the Republic of Azerbaijan had control over the village. In his view there was nothing to prove that Gulistan was on the Line of Contact (LoC) between Azerbaijani and "NKR" forces as claimed by the respondent Government. He commented that the evidence, including the maps submitted by the Government, stemmed exclusively from unofficial sources and were therefore insufficient to prove the respondent Government's lack of control over the area. The applicant submitted a written statement from an anonymous senior officer of the "NKR" armed forces dated 11 August 2010, according to whom Gulistan is under the *de facto* control of Azerbaijani military forces. Moreover, he asserted that fellow villagers had tried to return to Gulistan on several occasions but had been unable to enter the village as they would have risked to be shot at by Azerbaijani forces.

(b) The Government's position

32. The respondent Government submitted that it could not be verified whether the applicant had actually lived in Gulistan and had any possessions there. For the period from 1988 to the present date, the relevant departments of the Goranboy region did not possess any documentation concerning the plot of land, house or other buildings allegedly owned by the applicant. Moreover, certain archives of the former Shahumyan region, including the Civil Registry Office and the Passport Office, had been destroyed during the hostilities. No documents relating to the applicant were available in the Goranboy regional archives today.

33. Furthermore the Government asserted that Gulistan was physically on the LoC between Azerbaijani and Armenian forces, which had been established by the cease-fire agreement of May 1994. The village was deserted and the LoC was maintained by the stationing of armed forces on either side and by the extensive use of landmines. It was thus impossible for the respondent Government to exercise any control over the area or to have any access to it. The Government relied on a number of items of evidence, including news items concerning an OSCE observer mission carried out in October 2006 on "the border line between Karabakh and Azerbaijan near village Gulistan" and a map issued by the Azerbaijani Land and Cartography Committee which shows Gulistan on the very border of the occupied area. In particular, they referred to a map of Nagorno-Karabakh submitted by the Armenian Government in the case of *Chiragov and Others v. Armenia* (no. 13216/05) also showing Gulistan on the very border to the "NKR".

4. Armenian cemeteries in Azerbaijan

34. According to the applicant, many Armenian cemeteries in Azerbaijan have been vandalised, damaged or destroyed since 2001. In 2003 the mayor of Baku reportedly announced plans to build a major road across part of an old cemetery in Baku which, among others, contained many graves of ethnic Armenians. The graves affected by this construction would be relocated. A number of concerns were voiced about the inability of the Armenians who had fled Azerbaijan many years before to authorise and take part in the reburial of their deceased relatives.

35. There were also reports alleging that, starting in 2002, an ancient Armenian cemetery, called Jugha cemetery, was demolished near the town of Julfa in the Nakhichevan region of Azerbaijan.

36. No information was available to the applicant concerning the condition of the graves of his close relatives in Gulistan.

B. Relevant domestic law and practice

37. The Government submitted that no laws have been adopted in respect of property abandoned by Armenians who left Azerbaijan due to the Nagorno-Karabh conflict.

According to the Government, the following domestic law is relevant to the case:

1. The Constitution of 1995

38. The relevant provisions of the Constitution are the following:

Article 29

"I. Everyone has the right to own property.

II. Neither kind of property has priority. Ownership rights, including the rights of private owners, are protected by law.

III. Anyone may possess movable or real property. The right of ownership confers on owners the right to possess, use and dispose of the property himself or herself or jointly with others.

IV. Nobody shall be deprived of his or her property without a court decision. Total confiscation of property is not permitted. Transfer of property for State or public needs is permitted only on condition of prior payment of fair compensation.

V. The State guarantees succession rights."

Article 68

"I. The rights of victims of crime or of usurpation of power are protected by law. The victim has the right to take part in the administration of justice and claim compensation for damage.

II. Everyone has the right to compensation from the State for damage incurred as a result of illegal actions or omissions of State bodies or officials."

2. The Civil Code

39. Provisions of the Civil Code in force before 1 September 2000:

Article 8. Application of civil legislation of other union republics in the Azerbaijan SSR

"The civil legislation of other Union republics shall apply in the Azerbaijan SSR, according to the following rules:

(1) relations deriving from the right of ownership shall be governed by the law of the place where the property is situated.

...

(4) obligations arising as a result of the infliction of damage shall be subject to the law of the forum or, upon the request of the aggrieved party, the law of the place where the damage was inflicted; ..."

Article 142. Recovery of property from another's unlawful possession

"The owner shall have the right to recover his property from another's unlawful possession."

Article 144. Recovery of unlawfully transferred State, cooperative or other public property

"State property or property of kolkhozes or other cooperative and public organisations that has been unlawfully transferred by any means may be recovered from any purchaser by the relevant organisations."

Article 146. Settlements on the recovery of property from unlawful possession

"In recovering property from another's unlawful possession, the owner shall have the right to claim from that person, if he knew, or should have known, that he was in unlawful possession (owner in bad faith), compensation for any income which he has derived, or should have derived, over the entire period of possession, and from a person in bona fide possession compensation for any income which he has derived, or should have derived, from the time when he learnt of the unlawfulness of the possession or received a summons from the owner claiming the return of the property."

Article 147. Protection of owner's rights from violations not entailing deprivation of possession

"The owner shall have the right to claim a remedy in respect of any violated rights, even where such violations have not entailed deprivation of possession."

Article 148. Protection of rights of persons in possession who are not owners

"The rights stipulated in Articles 142-147 of the present Code shall also vest in a person who, even though he is not the owner, is in possession of the property in accordance with the law or a contract."

Article 571-3. Law applicable to the right of ownership

"The right of ownership of the property in question shall be determined in accordance with the law of the country in which it is situated.

Subject to any contrary provision of the legislation of the USSR and the Azerbaijan SSR, a right of ownership of the property in question shall be created or terminated in accordance with the law of the country in which the property was situated when an action or other circumstance took place which served as a basis for the creation or termination of the right of ownership."

Article 571-4. Law applicable to obligations created following the infliction of damage

"The rights and duties of the parties in respect of obligations deriving from the infliction of damage shall be determined in accordance with the law of the country where an action or other circumstance took place which served as a basis for claims for compensation for loss."

40. Provisions of the Civil Code in force from 1 September 2000:

Article 21. Compensation of Losses

"21.1 A person entitled to claim full recovery of losses may claim full recovery of losses inflicted on him, unless a smaller amount has been stipulated by the law or by the contract.

21.2 By losses shall be understood the expenses which the person whose right has been violated has incurred or will have to incur in order to restore the violated right, the loss or the damage done to his property (the compensatory damage), and the unreceived profits which he or she would have gained under the ordinary conditions of the civil transactions if the right had not been violated (the missed profit)."

Article 1100. Responsibility for losses caused by State bodies, local self-government bodies or their officials

"Losses inflicted upon an individual or legal entity as a result of illegal actions or omissions on the part of State bodies, local self-government bodies or their officials, including the adoption by the State body or the local self-government body of an unlawful measure, shall be liable to compensation by the Republic of Azerbaijan or by the relevant municipality."

3. The Code of Civil Procedure

41. Provisions of the Code of Civil Procedure in force before 1 June 2000:

Article 118. Lodging of claims at the defendant's place of residence

"Claims shall be lodged with the court at the defendant's place of residence.

Claims against a legal entity shall be lodged at its address or at the address of property belonging to it."

Article 119. Jurisdiction of the claimant's choice

"... Claims for compensation for damage inflicted upon the property of a citizen or legal entity may also be lodged at the place where the damage was inflicted."

42. Provisions of the Code of Civil Procedure in force from 1 June 2000:

Article 8. Equality of all before the law and courts

"8.1 Justice in respect of civil cases and economic disputes shall be carried out in accordance with the principle of equality of all before the law and courts.

8.2 Courts shall adopt an identical approach towards all persons participating in the case irrespective of race, religion, gender, origin, property status, business position, beliefs, membership of political parties, trade unions and other social associations, place of location, subordination, type of ownership, or any other grounds not specified by the legislation."

Article 307. Cases concerning the establishment of facts of legal significance

"307.1 The court shall establish the facts on which the origin, change or termination of the personal and property rights of physical and legal persons depend.

307.2 The court shall hear cases relating to the establishment of the following facts:

...

307.2.6 in respect of the right of ownership the fact of possession, use or disposal of immovable property ...”

Article 309. Lodging of application

“309.1 Applications concerning the establishment of facts of legal significance shall be lodged with the court at the applicant’s place of residence.

309.2 In respect of the right of ownership, applications concerning the establishment of the fact of possession, use or disposal of immovable property shall be lodged with the court at the place where the immovable property is situated.”

Article 443. Jurisdiction of the courts of the Azerbaijan Republic relating to cases with the participation of foreigners

“443.0 The courts of the Azerbaijan Republic shall have the right to hear the following cases with the participation of foreigners: ...

443.0.6 where, in cases relating to compensation for losses for damage inflicted on property, the action or other circumstance serving as the ground for lodging the claim for compensation of losses has occurred on the territory of the Azerbaijan Republic.”

C. Declaration made by the respondent Government upon ratification of the Convention

43. The instrument of ratification deposited by the Republic of Azerbaijan on 15 April 2002 contains the following declaration:

“The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Convention in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation.”

D. Armenia’s and Azerbaijan’s joint undertaking in respect of the settlement of the Nagorno-Karabakh conflict

44. Prior to their accession to the Council of Europe, Armenia and Azerbaijan gave undertakings to the Committee of Ministers and the Parliamentary Assembly committing themselves to the peaceful settlement of the Nagorno-Karabakh conflict (see Parliamentary Assembly Opinions 221 (2000) and 222 (2000) and Committee of Ministers Resolutions Res (2000)13 and (2000)14).

The relevant paragraphs of Parliamentary Assembly Opinion 222 (2000) on Azerbaijan’s application for membership of the Council of Europe read as follows:

“11. The Assembly takes note of the letter from the President of Azerbaijan reiterating his country’s commitment to a peaceful settlement of the Nagorno-Karabakh conflict and stressing that Azerbaijan’s accession to the Council of Europe would be a major contribution to the negotiations process and stability in the region.

...

14. The Parliamentary Assembly takes note of the letters from the President of Azerbaijan, the speaker of the parliament, the Prime Minister and the chairmen of the political parties represented in Parliament, and notes that Azerbaijan undertakes to honour the following commitments:

...

ii. as regards the resolution of the Nagorno-Karabakh conflict:

a. to continue efforts to settle the conflict by peaceful means only;

b. to settle international and domestic disputes by peaceful means and according to the principles of international law (an obligation incumbent on all Council of Europe member states) resolutely rejecting any threatened use of force against its neighbours;”

Resolution Res (2000)14 by the Committee of Ministers concerning the invitation to Azerbaijan to become a member of the Council of Europe refers to the commitments entered into by Azerbaijan, as set out in Opinion 222 (2000) and the assurances for their fulfilment given by the Government of Azerbaijan.

COMPLAINTS

45. The applicant complained under Article 1 of Protocol No. 1 that his eviction from his property constituted a violation of his right to the peaceful enjoyment of his possessions. He maintained that he remained the rightful owner of the house and was unaware of any decisions of the Azerbaijani authorities annulling his rights to the property left behind in Azerbaijan.

46. The applicant complained under Article 8 of the Convention that his rights to respect for private and family life and his home had been violated as a result of his forced displacement and the continuing refusal of the respondent Government to allow him access to his home and belongings. He complained, further, that the respondent Government had not complied with their positive obligations to protect his rights under Article 8.

47. Relying on Articles 3, 8 and 9 of the Convention, the applicant referred to the reports concerning the alleged demolition or vandalism of Armenian cemeteries in Azerbaijan. He submitted that he did not know what had happened to the graves of his close relatives and that he was deprived of the possibility of visiting their graves, which was something he had done regularly in the past. The mere fact of knowing that the graves of his relatives were at risk of being destroyed caused him severe suffering and distress. The inability to visit the cemetery violated his right to respect for private and family life and deprived him of spiritual communication with his dead relatives, visiting and maintenance of cemeteries being one of the religious customs that the applicant had followed.

48. The applicant complained under Article 13 of the Convention, in conjunction with his other complaints, that there were no effective remedies available to ethnic Armenians who had been forced to leave their homes in Azerbaijan. The applicant claimed that “the majority of ethnic Armenians” had attempted to lodge complaints with the relevant Azerbaijani authorities, but were unable to obtain any redress for violations of their rights. In general, due to the unresolved conflict in Nagorno-Karabakh, there existed practical difficulties and obstacles to gaining direct access to any remedies available in Azerbaijan.

49. The applicant complained under Article 14 of the Convention, in conjunction with his other complaints, that he had been subjected to discrimination on the basis of his ethnic and religious affiliation. He submitted that only ethnic Armenians living in Azerbaijan had been the target of violence, pogroms and attacks. The respondent Government had failed to investigate acts of violence against Armenians and to provide redress for illegal occupation of their properties and destruction of Armenian cemeteries.

THE LAW

I. PRELIMINARY ISSUES

50. The Court notes at the outset that the applicant died after the present application was lodged. Moreover, in their written and oral submissions the respondent Government have raised a number of objections to the admissibility of the application. The Court will examine these issues in the following order:

- pursuance of the application;
- jurisdiction and responsibility of the respondent State;
- the Court’s jurisdiction *ratione temporis*;
- the applicant’s victim status in respect of the alleged destruction of Armenian graves in Azerbaijan;
- exhaustion of domestic remedies;
- compliance with the six-month rule.

A. The right of the applicant’s widow and children to pursue the application

51. Ms Lena Sargsyan, the applicant’s widow and their children, Vladimir, Tsovinar and Nina Sargsyan have expressed their wish to continue the proceedings before the Court. It has not been disputed that they are entitled to pursue the application on the applicant’s behalf and the Court sees no reason to hold otherwise (see, among other authorities, *David v. Moldova*, no. 41578/05, § 28, 27

February 2008).

B. Jurisdiction and responsibility of the respondent State

1. The parties' submissions

(a) The respondent Government

52. Firstly, the Government referred to the declaration contained in the instrument of ratification of 15 April 2002. They observed that unlike a number of explicit reservations made by the Republic of Azerbaijan to particular Articles of the Convention, the declaration was not termed a "reservation" and was not made pursuant to Article 57 of the Convention. Its purpose was to remind all State parties that a significant part of the internationally recognised territory of Azerbaijan was occupied and that Azerbaijan was therefore unable to guarantee the application of the Convention rights in the "territories occupied by the Republic of Armenia".

53. Secondly, while accepting that Gulistan was on the internationally recognised territory of the Republic of Azerbaijan, the Government argued that the presumption of jurisdiction in respect of a State's territory could be rebutted in exceptional circumstances where the State was prevented from exercising its authority in part of its territory, for instance on account of military occupation by the armed forces of another State which effectively controlled the territory concerned (*Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 312, ECHR 2004-VII).

54. In the Government's view the presumption of jurisdiction was rebutted in the present case. They asserted in their written submissions and maintained at the hearing that Gulistan was on the LoC between Azerbaijani and Armenian armed forces. The LoC had been established by the cease-fire agreement in 1994 and has not changed since. They submitted a letter by the Director of Azerbaijan's National Agency for Mine Action, according to whom the area of Gulistan was defined as an area with extensive mine and unexploded ordinance contamination with no safe access. Due to the fact that the area was heavily mined, Azerbaijan had no access to and was unable to exercise any control over the village. Opposing military forces were stationed on either side of the village and violations of the cease-fire agreement had occurred and continued to occur frequently. Azerbaijan could therefore not be held responsible for the alleged violations of the Convention.

(b) The applicant

55. The applicant argued that the declaration was not applicable to the facts of the case as it was not established that the territory in question was "occupied by the Republic of Armenia". In any case, the declaration fell foul of the terms of Article 57 of the Convention, as a reservation shall not be of a general character and shall not contain territorial exclusions. Consequently, the declaration was invalid.

56. As his primary position, the applicant submitted that Gulistan was part of the internationally recognised territory of the Republic of Azerbaijan and that the onus was on the respondent Government to rebut the presumption of jurisdiction in relation to the area of Gulistan for the period since 15 April 2002. In the applicant's view the respondent Government have failed to adduce such proof.

57. Alternatively the applicant asserted, that even if it were established that Azerbaijan lacked control over the area at issue, its responsibility would nevertheless be engaged as a result of its positive obligations under the Convention (see *Ilaşcu and Others*, cited above, §§ 310-313). Regarding the nature and extent of positive obligations, the applicant suggested that the Court take relevant international standards into account, in particular the *United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons* (Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 28 June 2005, E/CN.4/Sub.2/2005/17, Annex). In the applicant's contention the Government have failed to meet their positive obligations in that, for many years, they displayed a lack of political will to settle the conflict.

(c) The Armenian Government, third-party intervener

58. The third party Government submitted that the respondent Government had full, effective control over Gulistan. At the hearing the Armenian Government contested the respondent Government's assertion that Gulistan was on the LoC. They referred to the written statement of 11 August 2010 by an anonymous senior officer of the "NKR" armed forces serving near Gulistan, which had been submitted by the applicant. The Agent of the Armenian Government declared that he was personally present when the statement was made and confirmed its correctness. On the basis of this statement the Armenian Government asserted that, in the area at issue, the dividing line between the armed forces of "NKR" and the Republic of Azerbaijan was a gorge through which the river Indzachay was flowing. Gulistan was situated north of the riverside and was under the control of Azerbaijani armed forces who had military positions in the village and on its outskirts, while "NKR" forces were stationed on the other side of the gorge. They also referred to a video of the village submitted to the Court by the applicant in 2008 claiming that the person who can be seen walking between the houses, was an Azerbaijani soldier. The Armenian Government maintained that it was impossible for "NKR" forces or any Armenian to have access to the village.

2. The Court's assessment

59. Article 1 of the Convention provides:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

The Court has to examine whether the matters complained of come within the jurisdiction and responsibility of the respondent Government.

(a) The respondent Government's declaration

60. The Court observes that the Republic of Azerbaijan ratified the Convention with effect throughout the whole of its territory. However, it deposited a declaration (see paragraph 43 above) with its instrument of ratification.

61. Referring to that declaration, the respondent Government argue that their responsibility under Article 1 of the Convention is engaged only in respect of those parts of its territory over which the Republic of Azerbaijan exercises control.

62. The Court notes at the outset that it is in dispute between the parties whether the village at issue is located in the "occupied territories" within the meaning of the declaration. However, the Court does not consider it necessary to answer this question of fact at the present stage, as the question whether the respondent Government can rely on the declaration can be resolved on the basis of the legal considerations set out below. The Court would therefore underline that these considerations do not prejudge in any way the question of fact as to whether Gulistan is within the "occupied territories" or otherwise not under the effective control of the respondent Government.

63. The Court already had to examine similar issues in its admissibility decision in the case of *Ilaşcu and Others v. Moldova and Russia* [GC] (dec.) (no. 48787/99, 4 July 2001). In that case the Moldovan Government relied on a similarly worded declaration in order to dispute their responsibility in respect of acts which occurred on the territory of the self-proclaimed "Moldovan Republic of Transdniestria".

64. Following the line of argument developed in that decision, the Court reiterates that neither the spirit nor the terms of Article 56 of the Convention, which provides for a possibility of extending the Convention's application to territories other than the metropolitan territories of the High Contracting Parties, could permit of an interpretation which restricts the scope of the term "jurisdiction" within the meaning of Article 1 to only part of the territory of a Contracting State (ibid.). Similarly the Court has found that restrictions *ratione loci* attached to declarations under former Articles 25 and 46 of the Convention, accepting the right of individual petition and the jurisdiction of the (old) Court, respectively, were invalid (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 89, Series A no. 310).

65. The declaration made by the respondent Government upon ratification is therefore not capable of restricting the territorial application of the Convention to certain parts of the internationally recognised territory of the Republic of Azerbaijan.

66. Although the Government have not claimed that the declaration was to be qualified as a reservation within the meaning of Article 57 of the Convention, the Court considers it necessary to examine that issue. Article 57 provides as follows:

> "1. Any State may, when signing [the] Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
>
> 2. Any reservation made under this article shall contain a brief statement of the law concerned."

67. The Court reiterates that in order to establish the legal character of such a declaration, one must look behind the title given to it and seek to determine the substantive content or the intention of the respondent Government (see *Ilaşcu and Others* (dec.), cited above, and *Belilos v. Switzerland*, 29 April 1988, § 49, Series A no. 132).

68. Furthermore the Court reiterates that Article 57 § 1 does not allow for "reservations of a general character". A reservation is of a general character "if it does not refer to a specific provision of the Convention or if it is worded in such a way that its scope cannot be defined" (see *Ilaşcu and Others* (dec.), cited above).

69. In the instant case the Court notes, firstly, that the declaration made by the Republic of Azerbaijan does not refer to any particular provision of the Convention. Secondly, the Court notes that the declaration does not refer to a specific law in force in Azerbaijan. The words used by the respondent Government "in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation" indicate rather that the declaration in question is of general scope, unlimited as to the provisions of the Convention, but limited in space and time, whose effect would be that persons on the said territories would be wholly deprived of the protection of the Convention for an indefinite period.

70. In view of the foregoing, the Court considers that the aforementioned declaration cannot be equated with a reservation complying with the requirements of Article 57 of the Convention. It must therefore be deemed invalid.

71. Consequently, it dismisses the Government's objection as far as it is based on the declaration.

(b) Jurisdiction and responsibility of the respondent Government

72. The respondent Government further argued that in the present case the presumption that a State had jurisdiction over its territory was rebutted. Although the matters complained of had occurred within the territory of the Republic of Azerbaijan, they could not give rise to their responsibility under Article 1 of the Convention as they did not have effective control over the area concerned. The applicant and the third party Government disputed this.

73. The Court reiterates the principles it has set out in the case of *Ilaşcu and Others* (cited above):

> "311. It follows from Article 1 that member States must answer for any infringement of the rights and freedoms protected by the Convention committed against individuals placed under their 'jurisdiction'.
>
> The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention.
>
> 312. The Court refers to its case-law to the effect that the concept of 'jurisdiction' for the purposes of Article 1 of the Convention must be considered to reflect the term's meaning in public international law (see *Gentilhomme and Others v. France*, nos. 48205/99, 48207/99 and 48209/99, § 20, judgment of 14 May 2002; *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, §§ 59-61, ECHR 2001-XII; and *Assanidze v. Georgia* [GC], no. 71503/01, § 137, ECHR 2004-II).
>
> From the standpoint of public international law, the words 'within their jurisdiction' in Article 1 of the Convention must be understood to mean that a State's jurisdictional competence is primarily territorial (see *Banković and Others*, cited above, § 59), but also that jurisdiction is presumed to be exercised normally throughout the State's territory.
>
> This presumption may be limited in exceptional circumstances, particularly where a State is prevented from exercising its authority in part of its territory. That may be as a result of military occupation by the armed forces of another State which effectively controls the territory concerned (see *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, and *Cyprus v. Turkey*, §§ 76-80, cited above, and also cited in the

above-mentioned *Banković and Others* decision, §§ 70-71), acts of war or rebellion, or the acts of a foreign State supporting the installation of a separatist State within the territory of the State concerned.

313. In order to be able to conclude that such an exceptional situation exists, the Court must examine on the one hand all the objective facts capable of limiting the effective exercise of a State's authority over its territory, and on the other the State's own conduct. The undertakings given by a Contracting State under Article 1 of the Convention include, in addition to the duty to refrain from interfering with the enjoyment of the rights and freedoms guaranteed, positive obligations to take appropriate steps to ensure respect for those rights and freedoms within its territory (see, among other authorities, *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V).

Those obligations remain even where the exercise of the State's authority is limited in part of its territory, so that it has a duty to take all the appropriate measures which it is still within its power to take.

314. Moreover, the Court observes that, although in *Banković and Others* (cited above, § 80) it emphasised the preponderance of the territorial principle in the application of the Convention, it has also acknowledged that the concept of "jurisdiction" within the meaning of Article 1 of the Convention is not necessarily restricted to the national territory of the High Contracting Parties (see *Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2234-35, § 52).

The Court has accepted that in exceptional circumstances the acts of Contracting States performed outside their territory, or which produce effects there, may amount to exercise by them of their jurisdiction within the meaning of Article 1 of the Convention.

According to the relevant principles of international law, a State's responsibility may be engaged where, as a consequence of military action – whether lawful or unlawful – it exercises in practice effective control of an area situated outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control, whether it be exercised directly, through its armed forces, or through a subordinate local administration (ibid.).

315. It is not necessary to determine whether a Contracting Party actually exercises detailed control over the policies and actions of the authorities in the area situated outside its national territory, since even overall control of the area may engage the responsibility of the Contracting Party concerned (see *Loizidou* (merits), cited above, pp. 2235-36, § 56).

316. Where a Contracting State exercises overall control over an area outside its national territory, its responsibility is not confined to the acts of its soldiers or officials in that area but also extends to acts of the local administration which survives there by virtue of its military and other support (see *Cyprus v. Turkey*, cited above, § 77).

...

318. In addition, the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention (see *Cyprus v. Turkey*, cited above, § 81). That is particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognised by the international community.

319. A State may also be held responsible even where its agents are acting *ultra vires* or contrary to instructions. Under the Convention, a State's authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will and cannot shelter behind their inability to ensure that it is respected (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 64, § 159; see also Article 7 of the International Law Commission's draft articles on the responsibility of States for internationally wrongful acts ("the work of the ILC"), p. 104, and the *Cairo* case heard by the General Claims Commission, (1929) Reports of International Arbitral Awards 5 (RIAA), p. 516)."

74. These principles have been confirmed recently in the case of *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, §§ 131-132 and 138-139 , 7 July 2011).

75. Having regard to these principles, the Court considers that it does not have sufficient information to enable it to make a ruling on the respondent Government's jurisdiction and responsibility in regard to the claims submitted by the applicant. Furthermore, these issues are closely linked to the merits of the case.

76. The Court therefore joins to the merits the Government's objection that they lack jurisdiction and have no responsibility under Article 1 of the Convention.

C. The Court's jurisdiction *ratione temporis*

1. The parties' submissions

(a) The respondent Government

77. The respondent Government reiterated that the Republic of Azerbaijan had ratified the Convention on 15 April 2002. They asserted that the applicant's forced displacement from Gulistan constituted an instantaneous act which occurred in 1992 and thus fell outside the Court's jurisdiction *ratione temporis*. In so far as the applicant alleged a continuing violation in that he has been unable to return to Gulistan ever since, the Government could not be held responsible as they lacked effective control over the area (see paragraph 54 above).

(b) The applicant

78. For his part the applicant asserted that the violations complained of were continuing ones. He relied on the Court's case-law relating to northern Cyprus (see, in particular, *Loizidou v. Turkey* (merits), 18 December 1996, §§ 63-64, *Reports of Judgments and Decisions* 1996-VI; *Cyprus v. Turkey* [GC], no. 25781/94, §§ 175 and 189, ECHR 2001-IV) to support his position that the continued denial of his right to return to the village of Gulistan and to have access to, and to control, use and enjoy his home and property there or to be adequately compensated for their loss amounted to continuing violations of his rights under Article 8 of the Convention and under Article 1 of Protocol No. 1. As the continuing violations subsisted after the date of ratification the Court had jurisdiction *ratione temporis* to examine the complaints.

(c) The Armenian Government, third-party intervener

79. The Armenian Government agreed with the applicant that all violations complained of were of a continuing nature.

2. The Court's assessment

(a) The Court's case-law

80. The Court reiterates that, in accordance with the rules of general international law, as reflected in Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969, the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention with respect to that party (see *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III).

81. As was already noted above, the Republic of Azerbaijan ratified the Convention on 15 April 2002. Accordingly, the Court is not competent to examine applications against Azerbaijan in so far as the alleged violations are based on facts which took place or situations which ceased to exist before the critical date.

82. The Court therefore has to examine whether the facts on which the applicant's complaints are based are to be considered as instantaneous acts which occurred in 1992 and therefore fall outside its jurisdiction *ratione temporis* or whether, on the contrary, they are to be considered as creating a continuing situation which still obtains with the consequence that the Court has jurisdiction to examine the complaints from 15 April 2002.

83. According to the Court's case-law the deprivation of an individual's home or property is in principle an instantaneous act and does not produce a continuing situation of "deprivation" in respect of the rights concerned (*Blečić*, cited above, § 86; see also, among many others, *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII*; Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 84-86, ECHR 2001–VIII; *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V; and *Preussische Treuhand GmbH and Co. KG a.A. v. Poland* (dec.), no. 47550/06, §§ 57-62, 7 October 2008).

84. However, deprivation of property is not considered an instantaneous act if it results from a legal act that is invalid. The case of *Loizidou* (merits), (cited above, §§ 41-47 and 62-63) concerned the complaint of a Greek-Cypriot applicant about lack of access to her property in northern Cyprus. The Court dismissed the Turkish Government's argument that the applicant had been deprived of her property by an expropriation clause in the Constitution of the "Turkish Republic of Northern Cyprus" ("TRNC") at a date falling outside the Court's competence *ratione temporis*. It found that

despite the operation of this clause the applicant was still to be regarded as the legal owner of the land at issue. Consequently, the Court considered that there was a continuing situation and dismissed the Government's objection *ratione temporis*. The same approach was followed in *Cyprus v. Turkey* (cited above, §§ 174-175 and 184-186) in respect of the displaced Greek-Cypriots' lack of access to their property and homes in northern Cyprus, which were regarded as continuing violations of Article 1 of Protocol No. 1 and of Article 8 respectively. The Court's approach was based on the argument that the "TRNC" was not a State recognised under international law and that consequently the expropriation clause in its Constitution, and any law based on it, did not have legal validity (see also, *Demades v. Turkey*, no. 16219/90, §§ 14-17, 31 July 2003; *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, no. 16163/90, §§ 15-18, 31 July 2003; and *Xenides-Arestis v. Turkey*, no. 46347/99, § 28, 22 December 2005).

85. Similarly, the case of *Papamichalopoulos and Others v. Greece*, (24 June 1993, §§ 39-46, Series A no. 260-B) concerned the occupation of the applicants' land, which was unlawful under domestic law. It had started in 1967 during the dictatorship. Following restoration of democracy in 1974 it remained impossible for the applicants to regain access to their land or, despite the passing of a law in 1983, to obtain compensation. The Court noted in the first place that the applicants still had to be regarded as legal owners of the land. The Court did not address the *ratione temporis* issue explicitly. It noted that Greece had recognised the right to individual petition under former Article 25 of the Convention on 20 November 1985 in relation to acts, decisions, facts or events subsequent to that date, but that the Government had not raised a preliminary objection. In any case, the Court considered that the complaints related to a continuing situation which still obtained.

86. Furthermore the Court's case-law indicates that where deprivation of property and home results from an ongoing *de facto* situation it is considered to be of a continuing nature. In that context the Court refers to the case of *Doğan and Others v. Turkey* (nos. 8803-8811/02, 8813/02 and 8815-8819/02, §§ 112-114, ECHR 2004-VI) which concerned the eviction of villagers by security forces in the state-of-emergency region in south-east Turkey in 1994 and the refusal to let them return until 2003, thus preventing them for a lengthy period from having access to and enjoyment of their property and home. While the case did not raise an issue of the Court's competence *ratione temporis*, the question whether there had been a continuing situation arose in the context of the six-month rule. The Turkish Government argued that the applicants should have applied within six months from the alleged incident in 1994 while the applicants asserted that they complained of a continuing situation. The Court noted it was not until 22 July 2003 that the applicants were told that they could return to their homes in the village. The Court therefore found that the six-month time-limit started to run at the earliest on 22 July 2003, impliedly accepting the applicants' argument that there had been a continuing situation.

87. One test applied by the Court in order to distinguish between an instantaneous act and a continuing situation is whether the applicant can still be regarded as the legal owner of the property or other right at issue (see in particular, *Papamichalopoulos and Others*, cited above, § 40, and *Loizidou* (merits), cited above, § 41; see also *Vasilescu v. Romania*, 22 May 1998, §§ 48-49, *Reports* 1998-III).

(b) Application to the present case

88. The Court observes that in the present case the Government dispute that the applicant actually lived in Gulistan and possessed a house and land there. It is not clear either whether the house has been destroyed. Indeed should the house have been destroyed before the ratification, this would constitute an instantaneous act falling outside the Court's competence *ratione temporis* (see, *Moldovan and Others and Rostaş and Others v. Romania* (dec.), nos. 41138/98 and 64320/01, 13 March 2001). However, the Court notes that the applicant referred from the beginning also to the plot of land on which the house was situated. Moreover, the Court considers that the applicant has at least submitted *prima facie* evidence regarding his alleged property and residence in Gulistan which allows the Court to proceed with the case at the admissibility stage. At the present stage the Court is only concerned with examining whether the facts of the case are capable of falling within its jurisdiction *ratione temporis*. If so, the question whether the applicant indeed had a home and property in Gulistan must be reserved to a detailed examination of the facts and legal issues of the

case at the merits stage.

89. In reply to the applicant's argument, the Court observes that the present case does not concern a situation like the one in *Loizidou* or *Cyprus v. Turkey* (both cited above): Since it is not disputed that the respondent Government in the present case are acting within the boundaries of their internationally recognised territory, a valid legal act on the part of Azerbaijan would deprive the applicant of his alleged property and home and such deprivation would have to be considered as an instantaneous act in accordance with the Court's case-law outlined above. However, according to the Government no laws have been adopted which would interfere with the alleged legal title of the applicant or any other Armenians who left Azerbaijan due to the conflict (see paragraph 37 above). The applicant can therefore still be regarded as the legal owner of the alleged property.

90. The Court considers that the case has more resemblance with the case of *Doğan and Others* (cited above). The applicant was displaced from the village at issue in the context of an armed conflict. While the parties differ as to the reasons preventing the applicant from returning, it does not appear to be in dispute that he had no access to Gulistan since he had to flee in June 1992. The Court therefore considers that the applicant, who may still be regarded as the legal owner of the alleged property, is faced with a factual situation depriving him of access to that property, home and the graves of his relatives in Gulistan. In the light of the Court's case-law, such a situation is to be regarded as a continuing one.

91. While the applicant's displacement in 1992 is to be considered as an instantaneous act falling outside the Court's competence *ratione temporis*, that applicant's ensuing lack of access to his alleged property, home and graves of his relatives in Gulistan, is to be considered as a continuing situation, which the Court has had competence to examine since 15 April 2002.

92. Having regard to these considerations, the Court rejects the respondent Government's objection *ratione temporis*.

D. The applicant's victim status in respect of the alleged destruction of Armenian graves in Azerbaijan

1. The parties' submissions

93. The Government argued that, as far as the applicant complained about the destruction of Armenian graves in general, he could not claim to be a victim as he was not directly affected. In respect of the graves of his relatives, the Government argued that the applicant had no information as to their situation. In particular, he did not allege that they had been destroyed. The mere risk of destruction i.e. the possibility of a future violation of the Convention did not suffice to establish the applicant's victim status. These complaints were therefore inadmissible *ratione personae*.

94. The applicant did not address the issue. The intervening Government argued that in view of the widespread practice of destruction of Armenian graves in Azerbaijan, the applicant had reason to fear that the graves of his relatives had also been destroyed and could therefore claim to the a victim.

2. The Court's assessment

95. The Court reiterates that the system of individual petition provided for under Article 34 of the Convention excludes applications by way of *actio popularis*. Complaints must therefore be brought by persons who claim to be victims of a violation of one or more of the provisions of the Convention. Such persons must be able to show that they are "directly affected" by the measure complained of (see, for instance, *İlhan v. Turkey* [GC], no. 22277/93, § 52, ECHR 2000-VII).

(a) Armenian graves in Azerbaijan in general

96. The Court notes that the applicant has alleged that the destruction of Armenian graves in Azerbaijan was a frequent occurrence (see paragraphs 34-35 above). However, in the light of the principle set out above, the Court considers that the applicant cannot claim to be a victim in respect of this alleged general situation.

97. This part of the complaint is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

(b) The graves of the applicant's relatives in Gulistan

98. In so far as the applicant complains about the continued lack of access to the graves of his relatives in Gulistan and the ensuing uncertainty regarding their fate, the Court considers that the question whether the applicant may claim to be "directly affected" is closely linked to the merits of the case.

99. The Court therefore joins to the merits the Government's objection that the applicant lacks the status of a victim in so far as his complaint concerns the graves of his relatives.

E. Exhaustion of domestic remedies

1. The parties' submissions

(a) The respondent Government

100. The respondent Government asserted that, in so far as they had effective control over the territory of the Republic of Azerbaijan, which was not the case for Gulistan, there were effective remedies.

101. To start with, the 1995 Constitution guaranteed the right to property and provided for State liability to compensate any damage resulting from illegal actions or omissions of State bodies or their officials. The Civil Code and the Code of Civil Procedure in turn contained more detailed provisions protecting both, ownership and possession of property. Adequate procedures were in place to enable both citizens and foreigners to bring an action before the courts of Azerbaijan with regard to any damage or loss suffered on the territory of Azerbaijan (for a detailed description see the relevant domestic law, paragraphs 37-42 above). The Government disputed the allegation that an administrative practice existed which would render the use of existing remedies futile.

102. In support of their position, the Government submitted statistics by the Ministry of Justice concerning cases brought by ethnic Armenians: for instance, between 1991 and 2006 the courts of first instance in Baku examined and delivered judgments in 243 civil cases brought by ethnic Armenians, 98 of which related to housing disputes. Furthermore the Government submitted copies of judgments in two cases concerning inheritance, in which decisions in favour of ethnic Armenians living abroad were given by the appellate courts. The case of *Mammadova Ziba Sultan gizi v. Mammadova Zoya Sergeyevna and Mammadov Farhad Tarif oglu* (judgment of the Chamber of Civil Cases of the Court of Appeal of the Republic of Azerbaijan of 24 May 2007) concerned an inheritance dispute over property, in which the defendants were the ethnic Armenian spouse and the son of the deceased, who were both living in the United States of America. The appellate court overturned the first instance's judgment dismissing the latter's assessment that the defendants had to be considered as heirs in bad faith. In the case of *Sinyukova, Korovkova and Zaimkina ('Chagaryan'*, judgment of the Chamber of Civil Cases of Shaki Court of Appeal of 7 November 2007) the appellate court decided that the State Notary's Office of Mingachevir city had to issue an inheritance certificate in respect of an apartment to the three claimants, daughters of an ethnic Armenian living abroad, as they had to be considered as having made their declaration of inheritance in time.

103. The Government concluded that, despite the existence of effective remedies, the applicant had failed to make any attempt to obtain redress through the domestic legal system.

(b) The applicant

104. The applicant relied on three main arguments in order to show that he was not required to exhaust any domestic remedies.

105. Firstly, he asserted that there were no effective remedies under Azerbaijani law which would be accessible and sufficient in practice. He submitted in particular that the Government had not adduced proof of the existence of such remedies. They had not provided any details in respect of the civil cases allegedly brought before the Azerbaijani courts by ethnic Armenians. The cases individually referred to related to inheritance and had no direct relevance for a person in the applicant's situation. In short, the Government had failed to produce any example of an Armenian claimant obtaining redress in circumstances comparable to the applicant's. In addition the applicant

argued that the position adopted by the Government in the proceedings before the Court was indicative of the outcome of any action the applicant might have brought before the Azerbaijani courts. According to the Government the relevant domestic authorities did not possess any documentary evidence showing that the applicant had possessions in Gulistan or that he had lived there. The recourse to domestic proceedings in Azerbaijan therefore offered no prospects of success.

106. By way of comparison the applicant referred to the Court's decision in *Demopoulos and Others v. Turkey* (dec.) (nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, ECHR 2010-..) in which the Court had developed criteria for assessing the effectiveness of a remedy designed to provide redress for loss of property and home in the context of an international conflict. None of these criteria were met by the remedies referred to by the Government.

107. Secondly, the applicant submitted that the exhaustion rule was inapplicable in the present case due to the existence of an administrative practice which would make any attempt to use existing remedies futile. Referring to documents of various United Nations bodies, in particular the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, the applicant asserted that there was no political will on the part of the respondent Government to protect abandoned property of ethnic Armenians, which was often occupied by refugees or internally displaced persons, or to provide compensation for it. Moreover, there was a practice of not giving ethnic Armenians access to documentation concerning their property. There were no signs of a change of these practices. In addition, the applicant drew attention to the practical difficulties in pursuing any court case in Azerbaijan. As there were no diplomatic relations between Armenia and Azerbaijan, ethnic Armenian refugees or citizens of Armenia were unable to obtain visas except via the consular services in neighbouring countries. Visas were only granted in the context of official visits organised by international organisations or diplomatic missions. Postal services between the two countries were not viable either.

108. Finally, the applicant argued that in any case he was absolved from pursuing any remedies due to his personal circumstances. Having had to flee from Gulistan in 1992 he had lost all his property, his home and his source of income and had thus been placed in a situation of insecurity and vulnerability. Moreover, he had been seriously ill since 2004.

(c) The Armenian Government, third-party intervener

109. The Armenian Government underlined the applicant's position regarding the existence of an administrative practice.

2. The Court's assessment

110. The respondent Government claimed that effective remedies existed in so far as Azerbaijan has effective control over its territory which in their contention was not the case in the area of Gulistan. For their part, the applicant and the intervening Government argued that there were no effective remedies which the applicant would have to exhaust, as the existence of an administrative practice would render their use futile.

111. The Court finds that these issues are closely linked to the merits of the case. It therefore decides to join this objection to the merits.

F. Compliance with the six-month rule

1. The parties' submissions

(a) The respondent Government

112. In respect of the applicant's complaints under Article 1 of Protocol No. 1 and under Article 8 about lack of access to his property and home, the Government submitted that even assuming that there was a continuing situation the applicant had failed to comply with the six-month rule laid down in Article 35 § 1 of the Convention.

113. Regarding the application of the six-month rule in continuing situations, the Government noted that in *Varnava and Others v. Turkey* [GC] (nos. 16064-66/90 and 16068-73/90, § 161, ECHR

2009-...) the Court had developed a requirement for applicants in disappearance cases to introduce complaints "without undue delay". In their written observations the Government had expressed the view there was no reason why this requirement should not be extended to other types of continuing situations. They argued that the applicant had only lodged his application four years and four months after the ratification of the Convention by Azerbaijan, a delay which had to be considered unreasonable.

114. At the hearing the Government expanded further on their position: The approach developed in *Varnava and Others* (cited above) in the context of disappearances could not be transposed directly to a case like the present one relating to the alleged continuing violation of property and home, as there were obvious differences as regards the securing of evidence and the necessity to act diligently. Nevertheless, similar standards should be applied, in that applicants should be required to lodge their applications without unreasonable delay from the moment when they must have become aware that there was no immediate, realistic prospect of a solution that would bring them either permission to return or any other settlement, such as the payment of compensation.

115. In the present case, the Government argued that in the year 2000, prior to the accession of Armenia and Azerbaijan to the Council of Europe, the Parliamentary Assembly had expressed the view that their accession "could help to establish a climate of trust necessary for a solution to the conflict in Nagorno-Karabakh" (Opinion 221 and 222(2000)). In 2002 the Monitoring Committee of the Parliamentary Assembly had welcomed the efforts of both States and had assessed the negotiation process as being in progress (resolutions 1304 and 1305 concerning the monitoring of the obligations and commitments by Armenia and Azerbaijan). In contrast, in 2004 the Parliamentary Assembly expressed the view that the negotiation process had become deadlocked.

116. The relevant resolution (1391) was adopted by the Parliamentary Assembly on 27 January 2004. At that time the applicant should have become aware that there was no realistic prospect of a solution and should have acted diligently to lodge the application. Instead he waited for another two and a half years until he introduced the present application on 11 August 2006, which should therefore be dismissed as out of time.

117. Finally, in respect of the applicant's complaint relating to the alleged destruction of Armenian graves in Azerbaijan, the Government contested in the first place that there was any ongoing campaign to destroy Armenian graves. The incidents referred to by the applicant, which would qualify as instantaneous acts, if they were established, had allegedly taken place in 2001-2003, that is more than six months before the introduction of the present application.

(b) The applicant

118. The applicant argued that according to the Court's established case-law, where the complaint concerned a continuing situation, the six-month time-limit only started running once the situation had come to an end.

119. He noted that this principle had been reiterated in *Varnava and Others* (cited above, § 159). The Court had then examined the application of the six-month rule in the particular context of disappearance cases. It had underlined that in such cases the nature of the situation was such that the passage of time affected what was at stake. Consequently, there was a need for expedition both on the side of the Government in respect of conducting the investigation into disappearances in life-threatening circumstances and on the part of the applicants in respect of bringing their complaint before the Court. The same element of urgency could not be said to exist in a case relating to the continuing denial of access to the applicant's property and home.

120. In any case, even if a requirement to lodge the application "without undue delay" were to be applied, the applicant had not failed to comply with that requirement. The key factors identified by the Court in *Varnava and Others* (cited above, § 170) were also of relevance for the present case. In that case the Court had accepted applications as being lodged with reasonable expedition, which had been introduced some fifteen years after the applicant's relatives had disappeared and three years after Turkey had accepted the right of individual petition. Having regard to the large number of people affected and the situation of international conflict in which no normal investigative procedures were available, the Court concluded that the applicants could reasonably await the outcome of initiatives taken by the Government and the United Nations. The present case too was set

against a background of international conflict and violations like the ones complained of concerned a large number of people. It was justified that the applicant waited for the outcome of the efforts of the international community to provide a resolution of the conflict, which in practice offered the only realistic prospect of redress for a person in his situation.

121. In particular the period from 2002 to 2006 saw concerted activity from the international community in seeking to resolve the conflict over Nagorno-Karabakh, not least by the Council of Europe and the OSCE Minsk Group. A series of meetings were held under the auspices of the latter involving the two Presidents and the Foreign Ministers. This process was particularly active at the end of 2005 and the first half of 2006 when an OSCE High Level Planning Group led a reconnaissance trip to Nagorno-Karabakh, the Minsk Group Co-Chairs visited Baku and Erevan on several occasions and the Foreign Ministers of the two countries met twice as did their Presidents. Nevertheless by March 2006 the Minsk Group Co-Chairs felt it necessary to issue a statement regretting the parties' failure to resolve the negotiations. By introducing his application on 11 August 2006 the applicant acted with the necessary diligence.

(c) The Armenian Government, third party intervener

122. The Armenian Government asserted in their written observations that the six-month rule was inapplicable in the present case, as the violations were of a continuing nature and were still ongoing.

123. At the hearing they further submitted that similar criteria as developed in *Varnava and Others* for disappearance cases might be applied in the present case. If so, the applicant had complied with them. They agreed with the applicant that the period between 2002 and 2006 was one marked by intensive efforts of the international community to find a political solution to the Nagorno-Karabakh conflict. It was only after the Minsk Group Co-Chairs' statement of March 2006 that the applicant became aware that such a solution was not in reach. He then introduced his application with the necessary expedition.

2. The Court's assessment

(a) The Court's case-law

124. Article 35 § 1 of the Convention provides:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

125. In the *Varnava and Others* case (cited above), the Court has recently summarised the relevant principles relating to the application of the six month rule:

> 156. The object of the six-month time-limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see, amongst other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).
>
> 157. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (*Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Nor can Article 35 § 1 be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001).
>
> ...
>
> 159. Nonetheless it has been said that the six month time-limit does not apply as such to continuing situations (see, for example, *Agrotexim Hellas S.A. and Others v. Greece*, no. 14807/89, Commission decision of 12 February 1992, DR 71, p. 148, and *Cone v. Romania*, no. 35935/02, § 22, 24 June 2008); this is because, if there is a situation of ongoing breach, the time-limit in effect starts afresh each day and it is only once the situation ceases that the final

period of six months will run to its end. ...”

126. Furthermore, the Court notes the following cases which are relevant in the present context, concerning alleged continuing violations of the right to property and home: In its admissibility decision on the third inter-State case lodged by Cyprus against Turkey, which related *inter alia* to the Turkish authorities’ refusal to allow the return of Greek Cypriots to their property and home in northern Cyprus (since the beginning of the occupation in 1974), the Commission accepted the applicant Government’s argument that the six-month rule did not apply in relation to continuing situations (see *Cyprus v. Turkey*, no. 8007/77, decision of 10 July 1978, D.R. 13, p. 85 at p. 154). The Commission followed this approach in its admissibility decision in *Chrysostomos, Papachrysostomou and Loizidou v. Turkey* (nos.15299/89, 15300/89 and 15318/89, D. R. 68, p. 216, at p. 250) in respect of the third applicant’s complaint about the continuing refusal of access to her property in northern Cyprus. In the fourth inter-State case, which again concerned among other complaints the continued refusal to allow the return of Greek Cypriots to their property and home in northern Cyprus, the Commission reserved the question of compliance with the six-month rule to the merits stage. The Court dealt only briefly with the issue, as neither Government had made submissions on the point (*Cyprus v. Turkey*, cited above, § 104). It stated as follows:

> “The Court, in line with the Commission’s approach, confirms that in so far as the applicant Government have alleged continuing violations resulting from administrative practices, it will disregard situations which ended six months before the date on which the application was introduced, namely 22 November 1994. Therefore, and like the Commission, the Court considers that practices which are shown to have ended before 22 May 1994 fall outside the scope of its examination.”

The Court notes that in further cases relating to northern Cyprus, the objection of failure to comply with the six month rule was not raised by the respondent Government, nor was it raised *ex officio* by the Court (see, *Demades*, cited above, §§ 14-17; *Eugenia Michaelidou Developments Ltd and Michael Tymvios*, cited above, §§ 15-18; and *Xenides-Arestis v. Turkey* (dec.), no. 46347/99, 14 March 2005).

127. In the case of *Doğan and Others* (cited above, §§ 111-114) the Court had to deal with the issue of compliance with the six-month rule in the context of the applicants’ eviction from their village and the authorities’ refusal to let them return for a lengthy period. The Government argued that the alleged incident had taken place in 1994 and could not be regarded as being of a continuing nature. The applications lodged in 2001 were therefore out of time. In contrast the applicants argued that they were complaining about a continuing situation, had first turned to the domestic authorities and had applied to the Court since no effective remedy had been provided for a long time. The Court held as follows (§ 114):

> “The Court notes that between 29 November 1994 and 15 August 2001 the applicants petitioned the offices of the Prime Minister, the State of Emergency Regional Governor, the Tunceli Governor and the Hozat District Governor. It appears that the applicants lodged their applications under the Convention on 3 December 2001 after beginning to doubt that an effective investigation would be initiated into their allegations of forced eviction and that a remedy would be provided to them in respect of their complaints. The Court further points out that it was not until 22 July 2003 that the applicants were told that there was no obstacle to their return to their homes in Boydaş village (see paragraph 37 above). In these circumstances, the Court considers that the six-month time-limit within the meaning of Article 35 § 1 of the Convention started to run on 22 July 2003 at the earliest and, consequently, that the applications were brought prior to that date, i.e. 3 December 2001.
>
> In the light of the foregoing, the Court dismisses the Government’s objection of failure to comply with the six-month rule.”

This approach was confirmed in a very similar case also concerning eviction of villagers, *İçyer v. Turkey* (dec.) (no. 18888/02, § 73, ECHR 2006-I).

128. The case of *Varnava and Others* (cited above), to which the parties referred, concerned complaints about the Turkish Government’s continued failure to investigate disappearances which had occurred in northern Cyprus in 1974. The applications were lodged on 25 January 1990 three years after Turkey’s acceptance of the right for individuals to petition the Court on 28 January 1987.

129. When dealing with the Turkish Government’s objection as to non-compliance with the six-month rule the Court reiterated that the system of human rights protection set up by the Convention must be practical and effective. This applied not only to the interpretation of substantive rights but also to the interpretation of procedural provisions and had effects on the requirements placed on the

parties, both Governments and applicants. For instance, where time was of the essence for resolving an issue, "there is a burden on the applicant to ensure that his or her claims are raised before the Court with the necessary expedition to ensure that they may be properly and fairly resolved" (ibid, §160). It went on to say:

> "161. In that context, the Court would confirm the approach adopted by the Chamber in the present applications. Not all continuing situations are the same; the nature of the situation may be such that the passage of time affects what is at stake. In cases of disappearances, just as it is imperative that the relevant domestic authorities launch an investigation and take measures as soon as a person has disappeared in life-threatening circumstances, it is indispensable that the applicants, who are the relatives of missing persons, do not delay unduly in bringing a complaint about the ineffectiveness or lack of such investigation before the Court. With the lapse of time, memories of witnesses fade, witnesses may die or become untraceable, evidence deteriorates or ceases to exist, and the prospects that any effective investigation can be undertaken will increasingly diminish; and the Court's own examination and judgment may be deprived of meaningfulness and effectiveness. Accordingly, where disappearances are concerned, applicants cannot wait indefinitely before coming to Strasbourg. They must make proof of a certain amount of diligence and initiative and introduce their complaints without undue delay. What this involves is examined below."

130. Having regard to the particular nature and seriousness of disappearance cases and referring to international materials on the subject, and also to the principle of subsidiarity, the Court noted that the standard of expedition expected of the relatives should not be rendered too rigorous. Nonetheless, it concluded that "applications can be rejected as out of time in disappearance cases where there has been excessive or unexplained delay on the part of applicants once they have, or should have, become aware that no investigation has been instigated or that the investigation has lapsed into inaction or become ineffective and, in any of those eventualities, there is no immediate, realistic prospect of an effective investigation being provided in the future." (ibid. § 165).

131. As regards time-frames, the Court found that in a complex disappearance situation in the context of international conflict, relatives could be expected to bring the case within, at most, several years of the incident, where it was alleged that there was a complete absence of any investigation or meaningful contact with the authorities; they could reasonably wait some years longer if there was an investigation of sorts, even if sporadic and plagued by problems. Where more than ten years had elapsed, applicants would generally have to show convincingly that there was some ongoing, and concrete, advance being achieved to justify further delay in coming to Strasbourg (ibid. §166).

132. Applying these principles to the facts of that case the Court noted that the applicants had introduced their applications on 25 January 1990 some fifteen years after their relatives went missing in 1974. The Court further noted that it was not possible to lodge applications before 28 January 1987, the date on which Turkey accepted the right of individual petition. In the special circumstances, the Court accepted that applicants had acted with reasonable expedition. Considering the lack of normal investigative procedures in a situation of international conflict they could reasonably await the outcome of the initiatives taken by their Government and the United Nations. It was only by the end of 1990 that it must have become apparent that these processes no longer offered any realistic prospects of either finding the bodies or accounting for the fate of their relatives in the near future (ibid., § 170).

(b) Application to the present case

133. The question arises whether the principles developed in *Varnava and Others* merely establish an exception for disappearance cases to the general principle that the six month rule does not apply to continuing situations or whether the requirement to introduce applications "without undue delay" may be extended to other types of continuing situations, such as the one at issue in the present case.

134. The Court would observe at the outset that in *Varnava and Others* it did not lay down the application of a strict six month time-limit for disappearance cases, let alone for continuing situations in general. There is, for instance, no question of a precise point in time on which the six-month period would start running. However, the Court has qualified its previous case-law by imposing a duty of diligence and initiative on applicants wishing to complain about the continued failure to investigate disappearances in life-threatening circumstances (ibid. § 161). Failure to comply with that duty may lead to the result that an application is rejected as being out of time, in other words it may result in the applicant's losing his or her right to have the merits of the

application examined. Like the six-month rule this approach is based on the principle of legal certainty.

135. The Court would also note that the considerations set out in *Varnava and Others* are closely linked to the nature of the obligation at issue, namely the procedural obligation under Article 2 of the Convention to investigate disappearances in life-threatening circumstances. As the passage of time leads to the deterioration of evidence, time has an effect on the fulfilment of the State's obligation to investigate but also on the meaningfulness and effectiveness of the Court's own examination of the case (ibid. § 161). Consequently, the Court linked the applicants' obligation to introduce their complaints before the Court to the existence and progress of an investigation (ibid. §§ 165-166). Applicants had to become active once it was clear that no effective investigation would be provided, in other words once it became apparent that the respondent State would not fulfil its obligation under the Convention.

136. It goes without saying that there are important differences between cases concerning the continued failure to investigate disappearances and cases relating to the continued denial of access to property and home. The passage of time and the ensuing deterioration of evidence and the effects on the fulfilment of the obligation at issue are less important where complaints relate to property. To a lesser extent, these considerations also apply where complaints relate to lack of access to the applicant's former place of residence.

137. Nevertheless it cannot be said that the passage of time is without any relevance for the exercise of the rights at issue and for the Court's own examination of the case. In that connection the Court recalls that in cases like the present one the continuing nature of the violation of the rights to property and home is based on the consideration that an applicant who has remained the legal owner of the property concerned is deprived of having access to and enjoying his possessions. In the *Demopoulos and Others v. Turkey* (dec.) (cited above), which concerned complaints by Greek-Cypriots about continued lack of access to their property and homes in northern Cyprus, the Court has already had occasion to describe the difficulties which arise where applicants may come back periodically and indefinitely to claim the loss of use of their properties and homes until a political solution is reached. The Court observed as follows (§ 111):

> "... At the present point, many decades after the loss of possession by the then owners, property has in many cases changed hands, by gift, succession or otherwise; those claiming title may have never seen, or ever used the property in question. The issue arises to what extent the notion of legal title, and the expectation of enjoying the full benefits of that title, is realistic in practice. The losses thus claimed become increasingly speculative and hypothetical. There has, it may be recalled, always been a strong legal and factual link between ownership and possession (see, for example, *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, ECHR 2007-X concerning extinction of title in adverse possession cases) and it must be recognised that with the passage of time the holding of a title may be emptied of any practical consequences.

138. The Court held in that case that the attenuation over time of the link between the holding of title and the possession and use of the property in question had consequences for the interpretation of what was an effective remedy for the purpose of Article 35 § 1 of the Convention (ibid, § 113). Similarly, the Court considers that the effects of the passage of time cannot be disregarded where the interpretation of the six month rule is concerned.

139. In that connection, the Court considers that general considerations of legal certainty, which underlie the Court's approach in *Varnava and Others*, may also be of relevance in the context of the present case. Without overlooking the differences between that case and the present one, the Court sees also certain similarities. Both concern complaints about continuing violations in a complex post-conflict situation affecting large groups of persons. In such situations there will often be no adequate domestic remedies, or if there are, their accessibility or functioning may be hampered by practical difficulties. It may therefore be reasonable for applicants to wait for the outcome of political processes such as peace talks and negotiations which, in the circumstances, may offer the only realistic hope of obtaining a solution.

140. However, as has been outlined above, the passage of time has repercussions on the exercise of the rights at issue as well as on the Court's own examination of the case. The Court therefore considers that where alleged continuing violations of the right to property or home in the context of a long-standing conflict are at stake, the time may come when an applicant should introduce his or her case as remaining passive in the face of an unchanging situation would no longer be justified. Once

an applicant has become aware or should be aware that there is no realistic hope of regaining access to his or her property and home in the foreseeable future, unexplained or excessive delay in lodging the application may lead to the application being rejected as out of time.

141. The Court does not consider it appropriate to indicate general time-frames. Unlike disappearance cases where a direct link can be made between the progress or lack of progress of the investigation and the applicant's duty to introduce the application, the link between the progress of peace talks or negotiations and the applicant's position is more tenuous. Moreover, negotiations are generally of a confidential nature and applicants may only learn about their progress by occasional official statements or press releases. Against this background, the Court accepts that in complex post-conflict situations the time-frames must be generous in order to allow for the situation to settle and to permit applicants to collect comprehensive information on the chances of obtaining a solution at the domestic level.

142. Turning to the circumstances of the present case, the Court notes that the applicant introduced his complaint on 11 August 2006. At that time more than fourteen years had elapsed since the applicant's forced displacement from his alleged property and home in June 1992 and more than twelve years had gone by since the cease-fire agreement in May 1994. Various rounds of peace talks and negotiations had been conducted without achieving an overall solution to the conflict.

143. The Republic of Azerbaijan ratified the Convention on 15 April 2002. This was thus the earliest point in time at which the applicant could have brought his application before the Court. The Court considers that the assessment whether the applicant introduced his case without undue delay should take account of objective factors and developments. In that context the Court notes as an important element that, in the context of their accession to the Council of Europe, Armenia and Azerbaijan gave a joint undertaking (see paragraph 44 above) to seek a peaceful settlement of the Nagorno-Karabakh conflict. It is not in dispute between the parties that following ratification of the Convention by both States in 2002 a phase of intensified contacts and negotiations followed.

144. Thus the applicant, like hundreds of thousands of refugees or internally displaced persons could for some time after the ratification of the Convention have reasonably expected that a solution to the conflict would eventually be achieved, containing a basis for the settlement of property issues and for the question of the return of displaced persons as one aspect. The parties differ as to when this phase came to an end. In the Court's view their submissions show that, while there were fluctuations in the negotiating process, it cannot be said that one decisive phase or one single event or public statement would have extinguished all hope of a political solution and would thus have made it clear to the applicant that he should introduce his application without undue delay.

145. In any case, the Court considers that another important element has to be taken into account, namely the applicant's personal situation. While the Government questioned whether the applicant actually lived and had possessions in Gulistan, the basic fact that he had been an inhabitant of Azerbaijan and had fled to Armenia during the conflict in Nagorno-Karabakh does not appear to have been put into question. He had thus lost his home and any possessions and source of income he may have had. At no point in time did the applicant receive information that he could return to his village. The Court has already had occasion, in a different context, to point out that asylum-seekers are members of a particularly underprivileged and vulnerable population group (see, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 251, 21 January 2011). The Court considers that the same applies to displaced persons.

146. In the circumstances of the case, the Court concludes that by introducing his case on 11 August 2006, that is four years and almost four months after the ratification of the Convention by Azerbaijan on 15 April 2002, the applicant acted without undue delay.

147. The Court therefore rejects the Government's objection that the application was submitted out of time for the purposes of Article 35 § 1 of the Convention, insofar as the applicant's complaints about continued lack of access to his property and home and to the graves of his relatives in Gulistan are concerned.

148. Finally, the Court considers that it does not have to decide on the Government's objection that the application was lodged out of time in respect of the complaint about the alleged destruction of Armenian graves in Azerbaijan in general as this complaint is inadmissible on other grounds (see above, paragraphs 96-97).

II. ALLEGED VIOLATIONS OF THE CONVENTION AND ITS PROTOCOLS

A. Article 1 of Protocol No. 1

149. The applicant complained that the denial of his right to return to the village of Gulistan and to have access to, control, use and enjoy his property, or to be compensated for its loss, amounted to a continuing violation of Article 1 of Protocol No. 1 which reads 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."

1. The parties' submissions

150. The respondent Government argued firstly that the applicant had only complained about the house which appeared to have been destroyed and therefore could not be the object of any continuing violation. Secondly, even if the applicant's complaint were to be understood as concerning also the land on which the house had been situated, they argued that it was not established that he actually had any possessions in Gulistan.

151. In the Government's contention the applicant had not submitted sufficient evidence in respect of his alleged possessions in Gulistan. They explained that the technical passport was in the first place an "inventory-technical" document. They acknowledged that the technical passport of the house constituted secondary evidence, as it was normally issued only to the person entitled to use the house. However, as a rule the technical passport would refer to the primary title of ownership. The 1985 Instruction on the Rules of Registration of Housing Facilities had specified which documents constituted primary evidence of the title. A primary title of ownership was created by the local authority's decision to allocate land or a house for private use. As a rule, a copy of the abstract of that decision was given to the entitled person. The technical passport submitted by the applicant was deficient as it did not refer to any primary title of ownership. He had not submitted any document qualifying as primary title either. By way of example the Government mentioned that the decision of the Lachin District Soviet of People's Deputies of 29 January 1974 submitted by one of the applicants in the case of *Chiragov and Others v. Armenia* [GC] (no. 13216/05) constituted such primary evidence.

152. In addition, the Government stated that there had not been any central land register in Azerbaijan at the time of the hostilities. In any case, land cadastres under Soviet law had not contained information on individual citizen's rights in respect of immovable property. Based on a decision of the Council of Ministers of the Azerbaijan SSR of 9 March 1985, the registration and technical inventory of housing facilities had been organised by the local administrative authorities. Consequently, all documents relating to citizens' rights in respect of immovable property were kept by the local authorities. The Government submitted that it had not been possible to locate any documents constituting primary evidence in respect of the applicant's alleged possessions. According to information provided by the relevant authorities of the Goranboy Region there were no documents relating to the plot of land, the house and other buildings allegedly owned by the applicant.

153. Referring to the Court's case-law, the Government acknowledged that if the applicant were able to establish that he owned a house or a plot of land these might be regarded as "possessions" within the meaning of Article 1 of Protocol No. 1. They submitted that until to date no laws had been adopted in respect of property abandoned by ethnic Armenians in the course of the conflict. Consequently, the alleged legal title of the applicant had not been interfered with.

154. While the relevant laws of the Azerbaijan SSR which were still applicable at the time of the hostilities did not provide for private ownership, they allowed citizens to own houses as individual property. In contrast, all land was owned by the State. Nevertheless plots of land could be allotted to individuals for their use for an indefinite period of time for purposes such as housing and farming.

Decisions to allocate land were taken by the local authority, namely the Executive Committee of the Soviet of People's Deputies of the district concerned. A person to whom land was allotted had the right to use it, a right which was protected by law. A new law on property, allowing houses or land to be transferred into a person's private ownership, had been adopted in the Republic of Azerbaijan on 9 November 1991, but was not applicable at the material time, i.e. in 1991-92. Detailed rules on the privatisation of land plots including individual houses allotted to citizens were introduced later, by the 1996 Law on Land Reform.

155. In any case, the respondent Government maintained as their principal submission that they did not have any effective control over the village. Consequently, they were not in a position to grant the applicant access to his alleged possessions and could thus not be held responsible for the alleged continuing violation.

156. The applicant maintained that he had submitted sufficient evidence to show that he had lived in Gulistan with his family until June 1992 and had owned a house and land of some 2,100 sq. m and other possessions there. He referred in particular to the technical passport of the house established in 1991, and to the plan of the house, underlining that he had submitted both documents already with his application.

157. Furthermore, the applicant contested the Government's submission, according to which copies of the local authority's decision to allocate land were usually given to the entitled person. Relying on written statements of two former members of the Gulistan Village Council, he asserted that the decisions of the Village Council to allocate land were simply recorded in the council's register. In any case, it was impossible in practice to build a house without the Village Council's permission.

158. The applicant also contested the Government's assertion that the technical passport submitted by him was deficient in that it did not refer to a primary title of ownership. He argued that Article 2 of the 1985 Instruction on the Rules of Registration of Housing Facilities relied on by the Government provided that in rural areas houses were to be registered *inter alia* on the basis of the "list of homesteads, abstracts from them, [or] enquiries from the Village or Regional Executive Committees of Peoples' Deputies". The list of homesteads meant the register of the Village Council. As explained above, no copies of the Village Council's decision were given to the villagers. The Government's reference to the decision of the Lachin District Soviet of People's Deputies submitted by one of the applicants in the *Chiragov and Others* (cited above) case was inconclusive, as different rules applied in towns. Finally, he noted that the technical passport submitted by him had been established on the basis of the relevant sample form provided by the Central Statistics Department of the USSR. That form did not require making reference to any primary title of ownership.

159. Referring to the case of *Doğan and Others* (cited above, §139), the applicant argued that even in the absence of a formal title a person in his position had to be considered to have "possessions". In that case, relating to internally displaced persons in Turkey, the Court found that irrespective of whether the applicants owned their houses or lived in houses belonging to their fathers, they had rights over the common lands in the village and had earned their living from stock-breeding and tree-felling. The Court qualified these economic resources and the revenue the applicants derived from them as "possessions" within the meaning of Article 1 of Protocol No. 1.

160. In sum, the applicant argued that the refusal of access to his property in Gulistan, or to award him compensation, constituted a continuing violation of Article 1 of Protocol No. 1. In reply to the Government's argument of lack of effective control over Gulistan, the applicant submitted that even if this were established, the Governments' responsibility would be engaged as a result of its positive obligations under the Convention (see paragraph 57 above). In the applicant's contention the Government have failed to meet their positive obligation to secure his rights under Article 1 of Protocol No.1 through a process of political resolution or otherwise.

161. The intervening Government agreed with the arguments submitted by the applicant.

2. The Court's assessment

162. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-

founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Therefore the complaint should be declared admissible.

B. Article 8 of the Convention

163. The applicant complained that the denial of his right to return to the village of Gulistan and to have access to his home and to the graves of his relatives constitutes a continuing violation of Article 8 which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

In respect of the lack of access to the graves of his relatives, the applicant also relied on Articles 3 and 9 of the Convention. However, the Court had communicated this complaint under Article 8 alone.

1. The parties' submissions

164. The respondent Government asserted that the applicant had not submitted sufficient evidence to show that he actually lived in Gulistan and had a home there. They explained that under the Soviet system of residence registration (*propiska* system) everyone had to be registered at his or her place of living. In rural areas registration was issued by the governing body of the region which also kept the register. The fact of registration was recorded in the citizen's internal passport by a registration stamp and in the archives of the local authorities. In the present case, the Government had not been able to locate any documents relating to the applicant, as the archives of the relevant local authorities, including the Civil Registry Office and the passport archives of the Shahumian Village Regional Department had been destroyed during the hostilities.

165. Again, the respondent Government maintained as their principal submission that they did not have any effective control over the village. Consequently, they were not in a position to grant the applicant access to his alleged home or to the graves of his relatives and could thus not be held responsible for the alleged continuing violations.

166. The applicant maintained that he was born and grew up in Gulistan and lived there in his house with his family from the early 1960s until June 1992. He referred to the evidence submitted in support of his complaint under Article 1 of Protocol No. 1. In addition, he referred to the copy of his former Soviet passport, which confirmed that he was born in Gulistan in 1929 and to his marriage certificate which showed that he had got married in Gulistan in 1955, underlining that he had submitted both documents already with the application. Furthermore, he stated that he was no longer able to submit a complete copy of his former Soviet passport (including the page with the registration stamp showing that he lived in Gulistan) as that passport had been destroyed in 2002 when he had obtained an Armenian passport.

167. The applicant argued that the applicability of Article 8 depended on the existence of "sufficient and continuous links with a specific place" or "concrete and persisting links with the property concerned", criteria which he fulfilled in respect of his home in Gulistan. As followed from the Court's case-law relating to northern Cyprus, these links were not broken by his prolonged involuntary absence. He added that this assessment and thus the applicability of Article 8 were independent from the question of ownership of the "home" at issue. In respect of his relatives' graves he argued that the denial of access to them violated his right to respect for "private and family life" as guaranteed by Article 8. He asserted that apart from the fact that he was unable to visit the graves of his relatives, he suffered in particular from the insecurity as to their fate.

168. In sum, the applicant argued that the refusal of access to his home, or to award him compensation, and the denial of access to the graves of his relatives constituted continuing violations of Article 8 of the Convention. In reply to the Government's argument of lack of control over Gulistan, the applicant submitted that even if this were established the Government had failed to comply with their positive obligations to secure his rights under Article 8 through a process of

political resolution or otherwise.

169. The intervening Government agreed with the arguments submitted by the applicant.

2. The Court's assessment

170. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Therefore the complaint should be declared admissible.

C. Article 13 of the Convention

171. The applicant complained that no effective remedy was available to him in respect of all his above complaints. He relied on Article 13 which reads 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."

1. The parties' submissions

172. The respondent Government referred to the close link between Article 35 § 1 of the Convention requiring applicants to exhaust domestic remedies and Article 13 enshrining the right to an effective remedy. Referring to their submissions in respect of exhaustion of domestic remedies, they reiterated that the applicant had effective remedies at his disposal. They contested in particular the applicant's allegation that there was an administrative practice of preventing ethnic Armenians from pursuing their cases before the Azerbaijani courts. While there might be certain practical difficulties due to the unresolved conflict these had not prevented a number of Armenians from pursuing their cases before the Azerbaijani courts, as was shown by the statistics and in particular by the two cases referred to in respect of exhaustion of domestic remedies.

173. For his part, the applicant also referred to the arguments submitted in respect of exhaustion of domestic remedies maintaining that the Government had failed to adduce proof of the existence of effective remedies. In any case, he alleged that there was an administrative practice which would make any attempt to use existing remedies futile.

174. The intervening Government agreed with the applicant that there were no effective remedies available to ethnic Armenians who had been forcibly displaced from Azerbaijan during the conflict.

2. The Court's assessment

175. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Therefore the complaint should be declared admissible.

D. Article 14 of the Convention

176. Finally, the applicant complained with a view to his complaints set out above that he had been subjected to discrimination on the basis of his ethnic origin and his religious affiliation. He relied on Article 14 of the Convention, which provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. The parties' submissions

177. The Government asserted that the applicant was not subjected to any discriminatory measure on account of his ethnic origin or religious affiliation. Referring to their objection *ratione personae* against the admissibility of the application, they contested in particular the applicant's

submissions concerning the alleged destruction of Armenian cemeteries in Azerbaijan.

178. The applicant maintained that only ethnic Armenians had been forced by the Azerbaijani military to flee their property and homes in the context of the armed conflict and had been unable to return or to make use of any effective remedies since.

179. The intervening Government agreed with the applicant.

2. The Court's assessment

180. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Therefore the complaint should be declared admissible.

For these reasons, the Court

Dismisses, unanimously, the Government's objection based on its declaration;

Dismisses, by a majority, the Government's objection concerning the Court's jurisdiction *ratione temporis*;

Dismisses, by a majority, the Government's objection concerning compliance with the six-month rule;

Joins to the merits, by a majority, the Government's objection concerning lack of jurisdiction and responsibility;

Joins to the merits, by a majority, the Government's objection that the applicant lacks victim status as far as his complaint concerns the graves of his relatives;

Joins to the merits, by a majority, the Government's objection concerning the exhaustion of domestic remedies;

Declares, inadmissible by a majority, the applicant's complaint concerning the alleged destruction of Armenian graves in Azerbaijan in general;

Declares admissible, by a majority, the remainder of the application without prejudging the merits of the case.

Michael O'Boyle Nicolas Bratza Deputy Registrar President
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