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

SECOND SECTION

CASE OF GULIJEV v. LITHUANIA

(Application no. 10425/03)

JUDGMENT

STRASBOURG

16 December 2008

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

In the case of Gulijev v. Lithuania,

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş, *judges,*
and Sally Dollé, *Section Registrar,*

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 10425/03) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijan citizen, Mr Ibrahim Gulijev ("the applicant"), on 12 March 2003.

2. The applicant was represented by Mr A. Merkys, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicant complained under Article 8 of the Convention that his expulsion from Lithuania to Azerbaijan breached his right to respect for his family life, in view of the fact that his wife and children were Lithuanian citizens and lived in Lithuania. The applicant alleged that the authorities' decision to deport him on the ground that he posed a threat to "national security and public order" was arbitrary and that he had had no access to the documents, classified as "secret", during the trial.

4. On 29 June 2005 the Court decided to give notice to the Government of the applicant's complaints under Article 8 of the Convention. On the same date, the Court decided to apply Article 29 § 3 of the Convention and to examine the merits of the complaints at the same time as their admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is an Azerbaijan citizen who was born in 1971 and currently lives in Biedermansdorf, Austria.

6. The date of the applicant's arrival in Lithuania was disputed between the parties. The applicant stated that he had lived in Lithuania since 1989, proof of which was the judgment of 1989 of Vilnius City 2nd District Court by which he was found guilty of theft and sentenced to two years' imprisonment. He claimed that after that trial he was not ordered to leave the country. He also noted that he had arrived in Lithuania before the introduction of the visa regime in the early 1990's, and that therefore his entry had not been illegal.

7. The Government stated that the date of the above-mentioned judgment was not 1989 but 1998, and that the applicant only lawfully entered the territory of Lithuania on 12 March 2001, when he was issued with a single-entry visa.

8. On 25 July 1996 LG, the daughter of the applicant and his partner SG, a Lithuanian citizen, was born in Lithuania. In 2001 the applicant was officially registered as the father of LG. The applicant married SG on 21 April 2001. On this basis, on 11 June 2001 he was issued with a temporary residence permit, valid for one year.

9. On 16 April 2002 the applicant applied for a renewal of that permit.

10. On 14 June 2002 the Migration Department refused to issue a new residence permit on the ground that the applicant posed a “threat to national security and public order”. In this connection the immigration authorities referred to the file classified as “secret”, which had been received from the State Security Department on 10 June 2002.

11. On 24 June 2002 the Police Commissariat of the Trakai Region ordered the applicant to leave the territory of the Republic of Lithuania by 4 July 2002.

12. On 26 June 2002 the applicant appealed to the Vilnius Regional Administrative Court, requesting that the decisions of the Migration Department and the Police Commissariat of the Trakai Region be quashed. The applicant argued that he had lived in Lithuania since 1989, from which date he had been granted a temporary residence permit several times, owned real estate in Lithuania, had his own business, had established a non-governmental organisation “Ibrahim and friends”, which aimed to foster the cultural traditions of Azeris residing in Lithuania, and in 1996 had had a daughter with his wife SG, a Lithuanian citizen. The applicant also noted that at the time of the deportation proceedings his wife had been expecting another child.

13. On 10 August 2002 the court dismissed the appeal. It relied on the written evidence in the case and, in particular, on the above-mentioned classified report of the State Security Department, which was not disclosed to the applicant, and concluded that the applicant's continued presence in Lithuania endangered the national security of the country and public order.

14. The applicant appealed to the Supreme Administrative Court. In addition to his previous arguments, he noted that his wife was of Armenian origin and, taking into account the tensions in relations between Armenia and Azerbaijan, including the previous military conflicts between the two countries, she would have difficulties integrating in Azerbaijan if the applicant was expelled from Lithuania and she decided to go with him. The applicant maintained that the authorities' main reason for denying him a residence permit was the classified file in which it was stated that he posed a threat to national security. As the content of that file had never been disclosed to him, he had had no opportunity to challenge such accusations.

15. The applicant failed to comply with the order to leave the territory of Lithuania and, on 16 September 2002, he was arrested and temporarily accommodated at the Aliens Registration Centre.

16. On 14 October 2002 the Supreme Administrative Court upheld the lower court's decision. The court stated that it had examined the documents regarding the applicant, classified as “secret”, contained in the file provided by the State Security Department. The court did not disclose the content of those documents. On that basis, the court concluded that the applicant's continued presence in Lithuania posed a threat to the national security of the State, and that the impugned administrative decisions were thus lawful.

17. On 14 October 2002 the Migration Department adopted a decision to deport the applicant to Azerbaijan and prohibit him from entering the territory of Lithuania for an unspecified period of time. On the same day the applicant was deported from Lithuania by train; however, he jumped off the train and stayed in Lithuania. On 16 October 2002 the applicant was prohibited from entering Lithuania until 2099.

18. In October 2002 the applicant and SG's second child, IG, was born. IG is also a Lithuanian citizen.

19. On 18 February 2003 the applicant was arrested in Vilnius and placed in the Aliens Registration Centre. He was subsequently hospitalised, but escaped from there. A few months later the authorities apprehended him and returned him to the Aliens Registration Centre.

20. On 12 March 2003 the applicant submitted his application to the Court. From that day until 6 November 2003 he made several appeals to the Migration Department, requesting not to be deported. When his requests were denied, he appealed to the administrative courts, the final decision dismissing his appeals being given by the Supreme Administrative Court on 4 September 2003. He also unsuccessfully requested the Migration Department to grant him refugee status. The applicant appealed to

administrative courts, but on 22 September 2004 the Supreme Administrative Court dismissed his request.

21. On 5 November 2003 the applicant lodged a request to be deported from the Republic of Lithuania as soon as possible, indicating that the questions regarding his administrative case would be taken care of by his wife and his lawyer. The following day he was deported to Azerbaijan.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. The Law on the Legal Status of Aliens (*Įstatymas dėl užsieniečių teisinės padėties*) regulates the status of aliens in the Republic of Lithuania. At the material time the Law provided that an alien could be issued with a temporary residence permit. However, according to Article 14 of the Law, the authorities could refuse to issue a residence permit if the alien's stay in the country posed a threat to national security or public order. Under Article 21 of the Law, for the same reasons the authorities could withdraw the alien's temporary residence permit.

23. Article 19 of the Law stipulated that an alien was eligible to obtain a temporary residence permit in the Republic of Lithuania provided his or her children or spouse were Lithuanian citizens and resided in Lithuania. According to Article 20 of the Law, an alien who entered into a marriage with a citizen of the Republic of Lithuania or an alien in permanent residence in the Republic of Lithuania could be issued with a temporary residence permit for a period of one year and a new permit was to be issued to that individual each year on the same grounds, provided the marriage had not been dissolved.

24. Articles 32-34 and 41 of the Law provided that an alien whose residence permit had been withdrawn, was required to depart from the Republic of Lithuania within ten days from the date of service of that decision. If an alien failed to comply with the requirement to depart within a specified time, he or she would be expelled from the country and prohibited from re-entering the Republic of Lithuania for a definite or an indefinite period. Article 36 of the Law provided that, when considering the expulsion of an alien, account was to be taken of the period of the person's lawful stay in the country, the individual's social, economic and other connections in the country and the consequences of the expulsion on members of the alien's family lawfully residing in the Republic of Lithuania.

25. The Law on Administrative Proceedings (*Administracinių bylų teisenos įstatymas*) provides as follows:

Article 57. Evidence

> "1. Evidence in an administrative case is all factual data found admissible by the court hearing the case and based upon which the court finds ... that there are circumstances which justify the claims and rebuttals of the parties to the proceedings

and other circumstances which are relevant to the fair disposal of the case, or that there are no such circumstances ...

3. As a rule, factual data which constitutes a State or official secret may not be used as evidence in an administrative case, until the data has been declassified in a manner prescribed by law."

26. In its judgment on 4 September 2002 in case no. A10-786-02, the Supreme Administrative Court stated, insofar as relevant to the present case, that:

"as a rule, factual data which constitutes a State or official secret may not be used as evidence in an administrative case until it has been declassified (Article 57 § 3 of the Law on the Administrative Proceedings). Therefore, in the absence of other evidence, [the lower] court had no legal basis in relying solely on written information, provided by the State Security Department, which was marked as secret".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. Relying on Article 8 of the Convention, the applicant complained that his expulsion from Lithuania to Azerbaijan breached his right to respect for his family life, in view of the fact that his wife and two children are Lithuanian citizens. In addition the applicant claimed that his expulsion from Lithuania limited his right to participate in the upbringing of his children, thereby breaching Article 5 of Protocol No. 7. The Court finds that the latter complaint is subsidiary to the complaint relating to the right to respect for family life. Therefore the Court deems it appropriate to examine the applicant's complaints under Article 8 of the Convention alone, which reads, insofar as relevant, as follows:

"1. Everyone has the right to respect for his private and family life...

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 [or] public safety ..."

A. Admissibility

28. The Government maintained that, before submitting the application to the Court on 12 March 2003, the applicant had not exhausted the effective remedies available under domestic law. In particular, after the Migration Department's decision of 10 March 2003 ordering the applicant's

deportation, he made a number of complaints to the administrative courts requesting not to be deported. A final, non-appealable decision to uphold the decision of the Migration Department to deport the applicant to Azerbaijan was taken by the Supreme Administrative Court on 4 September 2003. Moreover, regarding the decision of the Migration Department not to grant the applicant refugee status, the applicant lodged a complaint with the domestic courts which dismissed it by the final decision of 22 September 2004 (see paragraph 20 above). Relying on the above, the Government claimed that, when he submitted his application to the Court, the applicant was still using accessible and effective domestic remedies.

29. The applicant argued that he had exhausted all the effective domestic remedies available to him. In particular he noted that it was the Migration Department's decision of 14 June 2002 by which the State refused to grant him a temporary residence permit. The applicant unsuccessfully appealed against this decision to the Vilnius Regional Administrative Court, and later to the Supreme Administrative Court which, on 14 October 2002, adopted the final ruling in the case and confirmed the lower court's decision. The remaining decisions of the domestic authorities had, in essence, been the consequence of the above-mentioned final ruling of the Supreme Administrative Court, after which the applicant's stay in Lithuania became illegal. The applicant maintained that his attempts to bring complaints regarding the subsequent administrative decisions to deport him had simply been desperate efforts to prolong the duration of his stay in Lithuania, where all his family lived. The same applied to his request to be granted refugee status.

30. Regarding the plea of non-exhaustion, the Court is of opinion that before lodging his application with the Court on 12 March 2003 the applicant had effectively exhausted the available domestic remedies. In particular, the applicant's stay in Lithuania became illegal after the Migration Department's decision of 14 June 2002 not to grant him a temporary residence permit, and the applicant appealed against it to both the Vilnius Regional Administrative Court and the Supreme Administrative Court, which on 14 October 2002 took the final domestic decision. It is true that, after the latter decision and after submitting the application to the Court, the applicant made numerous complaints to various State institutions. However, first, those decisions, notably the decision to deport the applicant from the territory of Lithuania, in essence only implemented the main decision of 14 June 2002 refusing temporary residence. Secondly, the Court accepts that last ditch remedies may be tried shortly after the lodging of an application but before the Court is called upon to pronounce itself on admissibility (see, *mutatis mutandis*, *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, § 91), as in the present case. It follows that the Government's objection under Article 35 § 1 of the Convention must be rejected.

31. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. As there are no other grounds warranting the rejection of the application, the Court concludes that it must be declared admissible.

B. Merits

1. The parties' submissions

32. The applicant submitted that the decision not to grant him a new temporary residence permit and the resulting expulsion order infringed Article 8 of the Convention. In particular, he claimed that that decision was based solely on the allegation that he posed a "threat to national security" contained in the file provided by the State Security Department and classified as "secret". However, he was never informed of the contents of that file. He argued that he was genuinely integrated into life in Lithuania, where he had a business and had registered a non-governmental organisation *Ibrahimas ir draugai* ("Ibrahimas and friends"), the aim of which was to foster the cultural traditions of Azeris residing in Lithuania. The applicant stressed that from 1993 he had lived in Lithuania with SG, a Lithuanian citizen, whom he had married in 2001 and with whom he had two children, both of whom were also Lithuanian citizens and still underage. He was the main source of income in the household and his expulsion deprived them of financial support.

33. The Government considered that the applicant had only lawfully lived in Lithuania since 12 March 2001, when he had been issued with a visa. That is to say, he and his wife had only lawfully lived together for slightly more than a year before the authorities decided not to renew his residence permit. Given the short time the applicant had spent in Lithuania, he could not have developed close personal, social and economic ties in the country. The applicant's wife was a Lithuanian citizen and, in her passport, her nationality was indicated as Lithuanian, not Armenian. Moreover, when the Migration Department adopted the decision to deport the applicant to Azerbaijan, there had been no military conflict with Armenia, that conflict having ended in 1994. Therefore it was possible to preserve the family unit by establishing the family's residence in Azerbaijan. It follows that the applicant's deportation to Azerbaijan had not interfered with his right to respect for family life.

34. If the Court were to find that there had been interference, the Government contended that it had been in accordance with the Law on the Legal Status of Aliens, which allowed the authorities not to grant a temporary residence permit to a person whose stay in Lithuania posed a threat to national security. The law established clear legal grounds for a refusal to issue such a permit and its withdrawal, as well as the procedure to

be followed. In addition, the law provided for the applicant's right of appeal to the administrative courts against the decisions to deport him. The applicant had used this right.

35. The Government thus maintained that in the present case the applicant's deportation from the territory of Lithuania had corresponded to the legitimate aim of protecting the interests of national security. On 11 June 2002 the State Security Department had started an investigation into the applicant, who was suspected of trying to set up an organisation of an anti-national character. The data collected during the investigation had proved that the applicant's activities posed a threat to national security and public order. On that basis, the Migration Department had refused the applicant's request for a temporary residence permit. Since all the data submitted by the State Security Department constituted State secrets, the courts had decided not to disclose it and had, exceptionally, relied on the data as evidence. However, the courts had duly examined the information marked “restricted use” and “secret”, and had found the conclusions of the State Security Department to be well reasoned. From the above, the Government deduced that the applicant's deportation from the Republic of Lithuania had been fully compatible with the requirements of Article 8 of the Convention.

2. The Court's assessment

36. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities. There may in addition be positive obligations inherent in the effective “respect” for family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole. In both contexts the State enjoys a certain margin of appreciation (see *Kroon and Others v. the Netherlands*, judgment of 27 October 1994, Series A no. 297-C, § 31).

37. Moreover, the Court cannot ignore the fact that the present case is concerned not only with family life but also with immigration, and that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among other authorities, *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-...). In this respect the Court notes that the duty imposed by Article 8 does not create a general obligation on the part of a Contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept non-national spouses for settlement in that country (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, pp. 33-34,

§ 68). However, the removal of a person from a country where close members of his or her family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8 § 1 of the Convention (see *Moustaquim v. Belgium*, 18 February 1991, § 36, Series A no. 193; see also *Üner v. the Netherlands*, cited above, § 57, and *Boultif v. Switzerland*, no. 54273/00, ECHR 2001-IX, § 39). Such interference will violate the Convention if it does not meet the requirements of paragraph 2 of Article 8. It is therefore necessary to determine whether there has been an interference with family life which was "in accordance with the law", motivated by one or more of the legitimate aims set out in that paragraph, and "necessary in a democratic society".

(a) Whether there was "family life" within the meaning of Article 8 of the Convention

38. The Court recalls that when deciding whether a relationship can be said to amount to "family life", a number of factors may be relevant, including whether the couple live together, the length of their relationship and whether they have demonstrated their commitment to each other by having children together or by any other means (see *X, Y and Z v. the United Kingdom*, judgment of 22 April 1997, *Reports of Judgments and Decisions* 1997-II, § 36).

39. In the present case the Court notes that there is a disagreement between the applicant and the Government as to the actual date when he lawfully arrived in Lithuania (see paragraphs 6 and 7 above). However, the Court observes that in 1996 a daughter was born to the applicant and SG and that, during the administrative proceedings related to the applicant's deportation, SG was expecting another child. The Court also has regard to the fact that the applicant married SG in 2001. From the above, the Court concludes that the relationship between the applicant and SG clearly amounted to "family life".

40. As to the relationship between the applicant and his daughter LG, the Court reiterates that the notion of the "family" in Article 8 may encompass *de facto* "family" ties where the parties are living together outside a formal marriage. A child born of such a relationship is *ipso iure* part of that "family" unit from the moment of its birth, by that very fact (see *Keegan v. Ireland*, judgment of 26 May 1994, Series A no. 290, § 44). Therefore the Court holds that the bond between the applicant and his daughter LG, never disputed by the Government, amounted to "family life" under Article 8 of the Convention. The Court also considers that there was "family life" between the applicant and his second daughter IG.

(b) Whether there was an interference with the applicant's right to respect for his family life

41. The Court notes that in the present case the measures taken by the State in respect of the applicant originated in a decision of the Migration Department of 14 June 2002 whereby the applicant was refused a temporary residence permit and was consequently deported from Lithuania. The Court cannot follow the Government's argument that the family unit could have been preserved by establishing the family's residence in Azerbaijan and that therefore there was no interference. The Court notes that the applicant's wife was a Lithuanian citizen and it cannot be disputed that she had strong social and cultural ties with the Republic of Lithuania (see, *mutatis mutandis*, *Üner v. the Netherlands*, cited above, § 58). Moreover, the applicant's daughters were born in Lithuania and have lived in that country all their lives. As to the applicant's argument that his wife's Armenian origin was an additional factor precluding her from moving to Azerbaijan, the Court observes that the documents in the case file do not substantiate that contention. However, the Court would note that, had the applicant's wife indeed been of Armenian origin, the difficulties of integration into daily life in Azerbaijan might have had a certain weight (see *Achmadov and Bagurova v. Sweden* (dec.), no. 34081/05, 10 July 2007, unreported). From the above considerations, the Court concludes that the applicant's expulsion from Lithuania amounted to an interference with his right to respect for his family life and falls to be considered under paragraph 2 of Article 8.

(c) Legality of the interference and legitimate aim

42. The Court accepts that the Migration Department's decision to deport the applicant had a basis in national law, namely Articles 14, 21, 32 and 34 of the Law on the Legal Status of Aliens. In the Court's view, this legislation is designed to protect, *inter alia*, national security which is a legitimate aim within the meaning of paragraph 2 of Article 8. The Court accepts therefore that the impugned decision was “in accordance with the law” and had a legitimate aim.

(d) Necessity in a democratic society

43. The key issue in this case is whether the interference with the exercise of the applicant's right to respect for his family life was necessary in a democratic society. In this respect the Court reiterates that “necessity” implies that interference corresponds to a pressing social need and, in particular, that it is proportionate to the aim pursued (see *Berrehab v. the Netherlands*, 21 June 1988, § 28, Series A no. 138). The Court also recalls that nature and seriousness of an offence committed by an applicant may be taken into account (see *Boultif v. Switzerland*, cited above, § 48).

44. In the present case, the Court notes that the State Security Department drafted a report, classified as “secret”, indicating that the

applicant posed a threat to national security and public order. This report was the basis for the Migration Department's refusal of the applicant's request for a temporary residence permit. The Court draws attention to the national administrative law and practice of the domestic courts (see paragraphs 25-26 above) which provide that, as a rule, factual data which constitutes a State secret may not be used as evidence in an administrative case until it has been declassified. However in the present case the "secret" report was not only used as evidence, but, according to the information in the case file, it was also the sole ground for not granting the applicant a temporary residence permit. As a result, he was deported from Lithuania. Moreover, the Government acknowledged that, when reaching their decisions, the administrative courts relied on that report but chose not to disclose the content thereof to the applicant, thus restricting his defence rights.

45. The Court notes that, when the case was communicated to the Government, they were requested to provide information about the threat to national security posed by the applicant's stay in Lithuania. The Government's response was limited to the assertion that the applicant was suspected of trying to establish an organisation of an anti-national character, but no documents or any other factual information were submitted to the Court in support of that assertion.

46. To ascertain whether or not the State authorities convincingly found that the applicant posed a threat to national security in the present case, the Court has regard to the following considerations. First, there was no evidence that the applicant's stay in Lithuania had posed such a threat beforehand – in 2001 the authorities, after having examined his background, saw no reason to refuse him a temporary residence permit (see paragraph 8 above). It is not contested that the applicant had a previous conviction; however, as the Government noted in their observations, it was for theft and not for a crime related to national security. Moreover, that conviction had not been an obstacle for the applicant to obtain a temporary residence permit in 2001. Secondly, no objective materials verified by the domestic courts have been presented to the Strasbourg Court to demonstrate that the domestic authorities had good reasons to suspect the applicant of being a threat to national security. From the foregoing, the Court finds that, in the case file before it, there are no documents allowing the Court to conclude that the applicant posed such a threat. Nonetheless, the applicant was deported and until 2099 is prohibited from re-entering Lithuania, where his two children and wife, all of whom were Lithuanian citizens, live, which is also an important element for the Court to take into account when assessing the necessity of the interference and its proportionality.

47. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant's right to respect for his family life was not necessary in a democratic society.

There has accordingly been a violation of Article 8 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION AND ITS PROTOCOLS

48. The applicant also complained of a violation of Article 6 § 1 of the Convention, alleging that the proceedings in the determination of the lawfulness of his stay in Lithuania were unfair. In this connection the Court reiterates that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge, within the meaning of this Convention provision (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 82, ECHR 2005-I). Consequently, Article 6 § 1 of the Convention is not applicable in the instant case and this complaint is inadmissible for being incompatible *ratione materiae,* pursuant to Article 35 §§ 3 and 4 of the Convention.

49. The applicant also maintained that Article 6 § 2 was violated as the State authorities presumed him to be guilty of posing a threat to national security without having proved it. Relying on Article 6 § 3 (a), (b) and (d), he also alleged that the reasons why he purportedly posed a threat to national security were never disclosed to him and, therefore, he could not prepare his defence.

50. The Court observes that Article 6 §§ 2 and 3 of the Convention are applicable only when a person is charged with a criminal offence, which was not the case here (see paragraph 48 above). Therefore these complaints are also to be declared inadmissible for being incompatible *ratione materiae,* pursuant to Article 35 §§ 3 and 4 of the Convention.

51. Disagreeing with the Government's submission that his family could leave Lithuania to join him in Azerbaijan, the applicant alleged a violation of Article 3 of Protocol No. 4. The Court notes that this provision prohibits the expulsion of citizens from their national territory. However, this matter concerns the applicant's wife and children who are not parties to the present proceedings. The applicant cannot himself claim to be a victim of a violation of Article 3 of Protocol No. 4, being an Azerbaijan citizen. This complaint must be therefore be rejected as being incompatible *ratione personae,* pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

53. The applicant claimed 10,000 Lithuanian litai (LTL – approximately 2,896 euros (EUR)) in respect of pecuniary damage, which consisted of lost business interests, and LTL 50,000 (approximately EUR 14,480) in respect of non-pecuniary damage.

54. The Government submitted that the amount claimed was groundless and excessive.

55. In the light of the parties' submissions and the material in the case file, the Court does not discern any causal link between the violation found and the pecuniary damage alleged, and therefore it rejects this claim. However, the Court considers that the applicant has suffered some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of Article 8 of the Convention. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 5,000 under this head.

B. Costs and expenses

56. The applicant also claimed LTL 6,750 (approximately EUR 1,955) for the costs and expenses incurred before the domestic courts and before the Court, for which certain bills and receipts were provided.

57. The Government contested this claim as unsubstantiated, inadequate and excessive.

58. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant a sum of EUR 700.

C. Default interest

59. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the right to respect for family life admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of that State at the rate applicable on the date of settlement:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,
      (ii) EUR 700 (seven hundred euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President