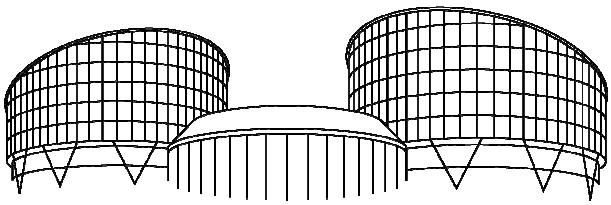

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GULMAMMADOVA v. AZERBAIJAN

(Application no. 38798/07)

JUDGMENT

STRASBOURG

22 April 2010

FINAL

22/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gulmammadova v. Azerbaijan,

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

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 25 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 38798/07) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Ms Sarvinaz Gulmammadova ("the applicant"), on 8 August 2007.

2. The applicant was represented by Mr N. Ismayilov, a lawyer practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that the failure to enforce the judgment of 20 April 1998 violated her right to a fair trial and her property rights, as guaranteed by Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. On 14 October 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Baku.

6. On 25 February 1998 the applicant was issued with an occupancy voucher (*yaşayış orderi*) for a flat in a recently constructed residential

building in Baku on the basis of an order of the Baku City Executive Authority of 19 February 1998.

7. At the same time, the applicant became aware that the flat had been occupied by H. and his family, who were internally displaced persons ("IDP") from Lachin, a region under the occupation of the Armenian military forces following the Armenian-Azerbaijan conflict over Nagorno-Karabakh.

8. According to the applicant, despite numerous demands, H. refused to vacate the flat, pointing out that he was an IDP and had no other place to live.

9. On an unspecified date in 1998 the applicant lodged an action with the Yasamal District Court asking the court to order the eviction of H. and his family from the flat.

10. On 20 April 1998 the Yasamal District Court granted the applicant's claim and ordered that H. and his family be evicted from the flat. The court held that the applicant was the sole lawful tenant of the flat on the basis of the occupancy voucher of 25 February 1998 and therefore that the flat was being unlawfully occupied by H. and his family.

11. No appeals were filed against this judgment and, pursuant to the domestic law in force at the material time, it became enforceable within ten days of its delivery. However, H. and his family refused to comply with the judgment and, despite the applicant's complaints to various authorities, it was not enforced.

12. On an unspecified date in 2006, the applicant and a group of other persons who were in the same situation lodged an action with the Yasamal District Court complaining that the Yasamal District Department of Judicial Observers and Enforcement Officers ("the Department of Enforcement Officers") had not taken measures to enforce the judgments.

13. On 27 December 2006 the Yasamal District Court dismissed that complaint as unsubstantiated. The applicant appealed against this judgment. On 2 May 2007 the Court of Appeal quashed the first-instance court's judgment and delivered a new judgment on the merits in the applicant's favour. The Court of Appeal held that the Department of Enforcement Officers' inaction had been unlawful and that the judgment of 20 April 1998 should be enforced. Following a cassation appeal of H. and other persons against this judgment, by a decision of 18 September 2007, the Supreme Court quashed the Court of Appeal's judgment and remitted the case to the latter court for a new examination. It appears from the case file that the proceedings are still pending before the Court of Appeal.

14. On an unspecified date in 2008 the applicant lodged an action against the State Committee on deals of Refugees and Internally Displaced Persons, the Ministry of Finance and other authorities, seeking compensation for non-enforcement of the judgment of 20 April 1998. On 7 May 2008 the Yasamal District Court dismissed the applicant's claim as

unsubstantiated. On 7 July 2008 the Baku Court of Appeal and on 10 November 2008 the Supreme Court upheld the first-instance court's judgment.

15. On 4 July 2007 H. lodged a request with the Yasamal District Court asking for postponement of the execution of the judgment of 20 April 1998. He alleged that, as he was an IDP, he had no other place to live but the flat in question.

16. On 10 July 2007 the Yasamal District Court granted H.'s request and ordered the postponement of the execution of the judgment of 20 April 1998 until H. could move to one of the houses recently constructed for temporary settlement of IDPs. The court relied on the Presidential Order of 1 July 2004 on Approval of the State Programme for Improvement of Living Conditions and Increase of Employment of Refugees and Internally Displaced Persons ("the Presidential Order of 1 July 2004"), according to which the relevant State organs were instructed that until the return of the IDPs to their native lands or until their temporary settlement in new houses, IDPs should not be evicted from public apartments, flats, lands and other premises, regardless of ownership, they had settled in between 1992 and 1998. Following a series of appeals by the applicant, on 2 September 2008 the Baku Court of Appeal quashed the first-instance court's decision and remitted the case to the lower court for a new examination.

17. It appears from the case file that following a series of the proceedings on 21 January 2009 the Baku Court of Appeal upheld the decision on postponement of the execution of the judgment of 20 April 1998 and that the proceedings are still pending before the Supreme Court.

II. RELEVANT DOMESTIC LAW

A. Housing Code of 8 July 1982

18. Azerbaijani citizens are entitled to obtain the right of use of apartments owned by the State or other public bodies under the terms of a tenancy agreement (Articles 10 and 28). A decision to grant an apartment is implemented by way of issuing the citizen with an occupancy voucher (yaşayış sahəsi orderi) from the local executive authority (Article 48). The voucher serves as the sole legal basis for taking possession of the apartment designated therein (Article 48) and for concluding a tenancy agreement (yaşayış sahəsini icarə müqaviləsi) between the tenant and the housing maintenance authority (Article 51). The right of use of apartments is granted for an indefinite term (Article 10).

B. Law on Privatisation of Housing of 26 January 1993

19. Individuals residing, pursuant to a tenancy agreement, in apartments owned by the State and other public bodies have a right to transfer those apartments into their private ownership (Article 1). Such privatisation is voluntary and free of charge (Article 2). The right to privatise a State-owned apartment free of charge may be exercised only once (Article 7).

C. Law on Social Protection of Internally Displaced Persons and Equivalent Individuals of 21 May 1999

20. IDPs are defined as "persons displaced from their places of permanent residence in the territory of the Republic of Azerbaijan to other places within the territory of the country as a result of foreign military aggression, occupation of certain territories or continuous gunfire" (Article 2). The IDPs may be allowed to temporarily settle on their own only if the rights and lawful interests of other persons are not infringed. Otherwise, the relevant executive authority must ensure that the internally displaced persons are resettled in other accommodation (Article 5).

D. Regulations on Settlement of Internally Displaced Persons in Residential, Administrative and Other Buildings Fit for Residence or Feasible to make to Fit for Residence, adopted by the Cabinet of Ministers, Resolution No. 200 of 24 December 1999 ("the IDP Settlement Regulations")

21. Article 4 of the IDP Settlement Regulations provides as follows:

> "In order to prevent the eviction of internally displaced persons from dwellings in which they settled between 1992 and 1994, the legal force of the occupancy vouchers issued by the relevant authorities to individual citizens in respect of those dwellings shall be temporarily suspended..."

E. Regulations on Resettlement of Internally Displaced Persons in Other Accommodation, adopted by the Cabinet of Ministers Resolution No. 200 of 24 December 1999 ("the IDP Resettlement Regulations")

22. Article 4 of the IDP Resettlement Regulations provides as follows:

> "In cases where the temporary settling of internally displaced persons breaches the housing rights of other individuals, the former must be provided with other suitable accommodation"

F. Order of the President of the Republic of Azerbaijan of 1 July 2004 on Approval of the State Programme for Improvement of Living Conditions and Increase of Employment of Refugees and Internally Displaced Persons

23. In the order, *inter alia*, the relevant state organs of the Republic of Azerbaijan are instructed that until the return of the IDPs to their native lands or until their temporary settlement in new houses, IDPs should not be evicted from public apartments, flats, land and other premises, regardless of ownership, they had settled in between 1992 and 1998.

G. Code of Civil Procedure of 1 September 2000 ("the CCP")

24. A judge examining a civil case may, at the request of a party to the case, decide to postpone or suspend the execution of the judgment or change the manner of its execution because of the parties' property situation or other circumstances (Article 231).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

25. Relying on Article 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant complained of the non-enforcement of the Yasamal District Court's judgment of 20 April 1998. Article 6 of the Convention reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 13 of the Convention 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."

Article 1 of Protocol No. 1 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."

A. Admissibility

1. The Court's competence ratione temporis

26. The Court observes that the judgment of 20 April 1998 which was in favour of the applicant had been delivered prior to 15 April 2002, the date of the Convention's entry into force in respect of Azerbaijan. In this connection, the Court reiterates that it is only competent to examine complaints of violations of the Convention arising from events that have occurred after the Convention had entered into force with respect to the High Contracting Party concerned (see, for example, *Kazimova v. Azerbaijan* (dec.), no. 40368/02, 6 March 2003). The Convention entered into force with respect to Azerbaijan on 15 April 2002. However, the Court notes that in the light of the authorities' continued failure to execute the judgment of 20 April 1998, the latter remains still unenforced. Therefore, there is a continuous situation and the Court is thus competent to examine the part of the application relating to the period after 15 April 2002 (see *Ilić v. Serbia*, no. 30132/04, § 54, 9 October 2007, and *Sladkov v. Russia*, no. 13979/03, § 16, 18 December 2008).

2. Domestic remedies

27. The Government argued that the applicant had failed to exhaust domestic remedies. In particular, the Government alleged that the applicant could have challenged the domestic authorities' failure to enforce the judgment of 20 April 1998 before the domestic courts. In this regard, the Government argued that the proceedings against the Department of Enforcement Officers instituted by the applicant were still pending before the Court of Appeal. Moreover the Government advanced that the applicant had failed to exhaust domestic remedies, because the proceedings concerning the postponement of the execution of the judgment of 20 April 1998 were still pending before the domestic courts.

28. The applicant disagreed with the Government and maintained her complaints.

29. The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it

was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). The Court further emphasises that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

30. As for the proceedings against the Department of Enforcement Officers, the Court notes that the Government failed to provide any explanation as to how those proceedings could have put an end to the continued violation or as to the kind of redress which the applicant could have been afforded as a result of these proceedings. In any event, the Court observes that the applicant did not complain about any unlawful action on the part of the competent authorities but, rather, about the fact that the judgment was not enforced. Even if the domestic courts in the pending proceedings had ruled in favour of the applicant and decided that the failure to enforce the judgment of 20 April 1998 had been unlawful in domestic terms, such decision would only have produced the same results, the only outcome being confirmation of the judgment's legal force enabling the enforcement officers to proceed with the enforcement proceedings (see, *mutatis mutandis*, *Tarverdiyev v. Azerbaijan*, no. 33343/03, § 47, 26 July 2007 and *Yavorivskaya v. Russia* (dec.), no. 34687/02, 13 May 2004). Therefore, this part of the Government's objection is irrelevant and should be dismissed.

31. As for the proceedings concerning the postponement of the execution of the judgment of 20 April 1998, the Court observes that those proceedings were instituted at the request of H. and their purpose was not to ensure or to accelerate the execution of the judgment, but on the contrary to deprive it of its binding force for an indefinite period. The Court notes that the Government failed to provide any explanation as to how the proceedings concerning the postponement of the execution of the judgment of 20 April 1998 could have put an end to the continued situation of non-execution or as to the kind of redress which the applicant could have been afforded as a result of these proceedings. In any event, the Court observes that the applicant did not complain about the outcome of the proceedings concerning the postponement of the execution of the judgment in question but rather about the fact that the judgment was not enforced. Even if the domestic courts had ruled in favour of the applicant in the postponement proceedings and decided that the execution of the judgment of 20 April 1998 should not be postponed, such a decision would only have produced the same results, the only outcome being confirmation of the judgment's enforceability enabling the enforcement officers to proceed with

the enforcement proceedings. Therefore, the Government's objection is irrelevant to the present complaint and should be dismissed.

3. Conclusion

32. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

33. The Government submitted that, due to the large number of IDPs in Azerbaijan as a result of the Armenian-Azerbaijani conflict over Nagorno-Karabakh, there was a serious problem with housing for IDPs in Azerbaijan. The Government noted that, despite the fact that the judgment of 20 April 1998 had ordered the eviction of H. from the flat, this judgment could not be enforced because there was no other accommodation available for the IDPs settled in the flat in question. The Government further argued that, due to the postponement of the execution of the judgment of 20 April 1998, it was no longer enforceable. Moreover, relying on different provisions of the domestic law (see the Relevant Domestic Law above), the Government alleged that IDPs should not be evicted from their temporary places of residence until their return to their native lands or their resettlement in other accommodation. The Government also submitted that the solution of the IDPs' housing problem was one of the priorities of the Government's policy and that the relevant measures were being implemented in this respect.

34. The applicant reiterated her complaints.

2. The Court's assessment

(a) Articles 6 and 13 of the Convention

35. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to

construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II).

36. The Court notes that a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III). The Court also reiterates that State responsibility for enforcement of a judgment against a private party extends no further than the involvement of State bodies in the enforcement procedures. When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their failure to take action can engage the State's responsibility under Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Cebotari and Others v. Moldova*, nos. 37763/04, 37712/04, 35247/04, 35178/04 and 34350/04, § 39, 27 January 2009).

37. At the outset, the Court observes that, since the date of the Convention's entry into force with respect to Azerbaijan on 15 April 2002, the Yasamal District Court's judgment of 20 April 1998 has remained unenforced for more than seven and a half years, thus preventing the applicant from benefiting from the success of the litigation which concerned her property rights. Before 15 April 2002, the judgment had not been enforced for approximately four years.

38. The Court notes that the dispute in the present case was between private parties. However, in so far as the judgment of 20 April 1998 ordered the eviction of the IDPs from the flat to which the applicant had the occupancy voucher, the situation at hand necessitated action by the State in order to assist the applicant with the enforcement of the judgment when the IDPs, as a private party, refused to comply with it. In the instant case, it is undisputed by the parties that the judgment of 20 April 1998 had been enforceable under the domestic law at least until the delivery of the decision of 10 July 2007 by the Yasamal District Court concerning the postponement of the enforcement proceedings. It appears from the case file that, despite the fact that the enforcement proceedings had been instituted ten days after the delivery of the judgment of 20 April 1998, the Government had taken no action in this connection and had not advanced any justification for non-enforcement of the judgment in question during this period.

39. As for the order on postponement of the execution, the Court notes that it has already examined a similar case, in which the execution of the judgment on eviction was postponed by the court which delivered the judgment (see *Akimova v. Azerbaijan*, no. 19853/03, §§ 45-50,

27 September 2007). The Court found in that case that the order on the postponement of the judgment's execution without any lawful basis and justification was in breach of Article 1 of Protocol No. 1 to the Convention; the Court further found that it was not necessary to examine the same complaint under Article 6 in that case. Unlike that case, in the present case the order on the postponement of the execution of the judgment was taken approximately nine years after the judgment became final and enforceable. The Court notes that in the instant case the postponement of the execution of the judgment was based on the Presidential Order of 1 July 2004. The Court notes, however, that this Presidential Order did not contain any specific provisions on civil procedure vesting the domestic courts with the competence to postpone indefinitely the execution of judicial eviction orders, which is what happened in the present case. Moreover, the Law of 21 May 1999 provided that if the settlement of the IDPs of their own accord infringed the rights and lawful interests of other persons, the domestic authorities must ensure the resettlement of the IDPs in other accommodation. Accordingly, the relevant presidential order appeared to be contradictory to the legislative act possessing superior force; in such circumstances, a question arises as to the lawfulness of the postponement order based on this Presidential Order. However, from the standpoint of Article 6 of the Convention, the Court is not concerned with the question whether such postponement was “lawful” under the domestic law. The Court reiterates that the rights guaranteed by Article 6 of the Convention would be illusory if the Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (see § 35 above). Moreover, a formal postponement of execution of a final judgment for an indefinite period of time without compelling reasons is incompatible with the principle of legal certainty.

40. The Court is prepared to accept that, in the instant case, the existence of a large number of IDPs in Azerbaijan created certain difficulties in the execution of the judgment of 20 April 1998. Nevertheless, the judgment remained in force, but for many years no adequate measures were taken by the authorities to comply with it. It has not been shown that the authorities had continuously and diligently taken the measures for the enforcement of the judgment in question. In such circumstances the Court considers that no reasonable justification was advanced by the Government for the significant delay in the enforcement of the judgment.

41. The Court considers that by failing to take necessary measures to comply with the final judgment in the instant case, the authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect (see *Burdov*, cited above, § 37). There has accordingly been a violation of Article 6 § 1 of the Convention.

42. In view of the above finding, the Court does not consider it necessary to rule on the complaint under Article 13 of the Convention

because Article 6 is *lex specialis* in regard to this part of the application (see, for example, *Efendiyeva v. Azerbaijan*, no. 31556/03, § 59, 25 October 2007, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 32, 6 March 2003).

(b) Article 1 of Protocol No. 1 to the Convention

43. The Court reiterates that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B).

44. The Court observes that in the instant case the applicant did not own the flat in question, but had only tenancy rights to it pursuant to the occupancy voucher issued by the local executive authority. However, the Court has found that a claim to a flat based on such an occupancy voucher constitutes a "possession" falling within the ambit of Article 1 of Protocol No. 1 (see *Akimova*, cited above, §§ 39-41). In the present case, the applicant's tenancy right to the flat was recognised by the judgment of 20 April 1998. Moreover, the judgment ordered the eviction of the IDPs from the flat, thus granting the applicant an enforceable claim to use the flat in question.

45. The judgment had become final and enforcement proceedings had been instituted, giving the applicant a right to use the flat. Subsequently, the proceedings concerning the postponement of the execution of the judgment of 20 April 1998 were instituted (these proceedings are pending). The Court finds that the impossibility for the applicant to obtain the execution of this judgment for more than seven and a half years constituted an interference with her right to peaceful enjoyment of her possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1. The Court does not consider it necessary to examine whether such interference was "lawful" (compare *Akimova*, cited above, §§ 44 *et seq.*), as it finds that, in any event, this interference was not justified for the following reasons.

46. As noted in paragraph 40 above, the Court is prepared to accept that the authorities may have faced difficulties in the enforcement of the judgment in the applicant's favour. In particular, the situation at hand called for balancing the applicant's right to peaceful enjoyment of her possessions protected under Article 1 of Protocol No. 1 to the Convention against IDPs' right to be provided with accommodation. In other words, the domestic authorities had, on the one hand, to secure the applicant's property rights and, on the other, to respect the IDPs' rights. In such situations, a wide margin of appreciation should be accorded to the respondent State (see, *mutatis mutandis*, *Radanović v. Croatia*, no. 9056/02, § 49, 21 December 2006). However, the exercise of the State's discretion cannot entail consequences which are at variance with Convention standards (see *Broniowski v. Poland* [GC], no. 31443/96, § 182, ECHR 2004-V).

47. In this regard, the Court reiterates that a situation as the one in the present case calls for a fair distribution of the social and financial burden involved. This burden cannot be placed on a particular social group or a private individual alone, irrespective of how important the interests of the other group or the community as a whole may be (see, *mutatis mutandis*, *Radanović*, cited above, § 49, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 225, ECHR 2006-VIII).

48. In the present case, pursuant to the final domestic judgment in her favour, the applicant had an enforceable right to use her flat. According to the legislation enacted by the Parliament, this right was contingent on the State authorities' duty to provide alternative accommodation to the IDPs who occupied the flat. As mentioned above, although the Government referred to some general policies implemented in connection with the housing of IDPs and refugees, it has not been established either in the domestic proceedings or before the Court that any specific measures have been taken by the domestic authorities in order to comply with their duty in the applicant's specific case. In such circumstances, the failure to ensure the execution of the judgment for several years, followed moreover by the domestic courts' subsequent reliance on the Presidential Order of 1 July 2004 in order to formally postpone the execution, resulted in a situation where the applicant was forced to bear an excessive individual burden.

49. The Court considers that, in the absence of any compensation for having this excessive individual burden to be borne by the applicant, the authorities failed to strike the requisite fair balance between the general interest of the community in providing the IDPs with temporary housing and the protection of the applicant's right to peaceful enjoyment of her possessions.

50. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

1. Pecuniary damage

52. The applicant claimed 68,809 euros (EUR) in respect of pecuniary damage, of which EUR 17,620 was for the loss of rent, and EUR 51,189 for the alleged current market value of the flat. She calculated the amount of the lost rent based on the information on the monthly market rent of flats situated in that area of the city. This information was obtained from an association specialising in these matters.

53. The Government argued that the applicant could not claim any compensation for the market value of the flat. The Government further noted that, having applied to the same association, they had checked the grounds for the remainder of the claim corresponding to the loss of rent sustained as a result of the applicant's inability to use her flat and indicated that the applicant might claim EUR 11,042 in respect of pecuniary damage under this head. In this regard, the Government submitted that the building in question was half-constructed and that the applicant would have incurred certain maintenance expenses in connection with this flat.

54. As for the part of the claim relating to the market value of the flat, the Court rejects this part as it does not find any causal link between the violation found and this part of the claim.

55. As for the part of the claim relating to the loss of rent, the Court finds that there is a causal link between this part of the claim and the violation found and that the applicant must have suffered pecuniary damage as a result of her lack of control over her flat. Having examined the parties' submissions and deciding on an equitable basis, the Court considers that the basis for calculation of the damage proposed by the Government is reasonable and awards the applicant the sum of EUR 11,042 on account of the loss of rent, plus any tax that may be chargeable on that amount.

2. Non-pecuniary damage

56. The applicant claimed EUR 20,000 in respect of non-pecuniary damage.

57. The Government indicated their willingness to accept the applicant's claim for non-pecuniary damage up to a maximum of EUR 1,000.

58. The Court considers that the applicant must have sustained some non-pecuniary damage as a result of the lengthy non-enforcement of the final judgment in her favour. However, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 4,800 under this head, plus any tax that may be chargeable on this amount.

59. Moreover, the Court considers that, in so far as the judgment of 20 April 1998 remains in force, the State's outstanding obligation to enforce it cannot be disputed. Accordingly, the applicant is still entitled to enforcement of that judgment. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). Having regard to the violation found, the Court finds that this principle also applies in the present case. It therefore considers that the Government shall secure, by appropriate means, the enforcement of the judgment of 20 April 1998.

B. Costs and expenses

60. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court. This claim was not itemised or supported by any documents.

61. The Government considered the claim to be unjustified.

62. 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 are reasonable as to quantum. In the present case, having regard to the fact that the applicant failed to produce any supporting documents, the Court dismisses the claim for costs and expenses.

C. Default interest

63. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

5. *Holds* that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, the enforcement of the domestic court's judgment of 20 April 1998;

6. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 11,042 (eleven thousand forty two euros) in respect of pecuniary damage and EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President