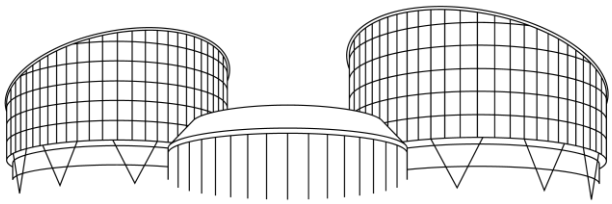

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

DECISION

Application no. 13216/05
Elkhan CHIRAGOV and Others
against Armenia

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 6 April 2005,

Having regard to the decision of 9 March 2010 by which the Chamber of the Third 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 applicants,

Having regard to the comments submitted by the Azerbaijani Government,

Having regard to the oral submissions of the parties and of 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 applicants Mr Elkhan Chiragov, Mr Adishirin Chiragov, Mr Ramiz Gebrayilov, Mr Akif Hasanof and Mr Fekhreddin Pashayev, are Azerbaijani nationals. They now live in Baku, except Mr Hasanof who lives in the town of Sumgait. The sixth applicant, Mr Qaraca Gabrayilov, was an Azerbaijani national who died in 2005. His son, Mr Sagatel Gabrayilov, has expressed the wish to pursue the application on his father's behalf. The applicants are represented before the Court by Mr M. Muller, Mr T. Otty, Ms C. Vine and Mr K. Yildiz, lawyers practising in London. The Armenian Government ("the Government") are represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia before the Court.

2. At the public hearing on 15 September 2010 the applicants were represented by Mr M. Muller, Mr M. Ivers and Ms C. Vine, counsel, assisted by Ms B. Poynor.

3. The respondent Government were represented by their Agent, Mr G. Kostanyan, assisted by Mr E. Babayan, Ms S. Sahakyan and Mr S. Avakian.

4. The Azerbaijani Government, who had made use of their right to intervene under Article 36 of the Convention, were represented by their Agent, Mr C. Asgarov, and by Mr M. Shaw, QC, and Mr G. Lansky, counsel, assisted by Mr H. Tretter and Mr O. Gvaladze.

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 189,000, consisting of 77% ethnic Armenians and 22% ethnic Azeris, with Russian and Kurdish minorities. The district of Lachin had a different demographic, the great majority of its population of some 60,000 being Kurds and Azeris. Only 5-6% were Armenians.

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 the Soviet of the NKAO made a request to the Supreme Soviets of the Armenian SSR, the 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". As a result of this resolution a joint budget for the two entities was established in January 1990 and a decision to include Nagorno-Karabakh in the upcoming Armenian elections was taken in the spring of that year.

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. On

2 September 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 Shaumyan district of Azerbaijan, and declared that it was no longer under Azerbaijani jurisdiction. On 26 November the Azerbaijani Parliament abolished the autonomy previously enjoyed by Nagorno-Karabakh. In a referendum organised in Nagorno-Karabakh on 10 December, 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. The ethnic Armenian side conquered several Azeri villages, leading to at least several hundred deaths and the departure of the population.

13. The district of Lachin, in particular the town of Lachin, was attacked many times. The applicants claim that the attacks were made by troops of both Nagorno-Karabakh and the Republic of Armenia. The respondent Government maintain, however, that the Republic of Armenia did not participate in the events, but that military action was carried out by the defence army of Nagorno-Karabakh and volunteer groups. For almost eight months in 1991 the roads to Lachin were under the control of forces of Armenian ethnicity who manned and controlled checkpoints. The town of Lachin became completely isolated. In mid-May 1992 Lachin was subjected to aerial bombardment, in the course of which many houses were destroyed.

14. On 17 May 1992, realising that troops were advancing rapidly towards Lachin, villagers fled. The following day the town of Lachin was captured by forces of Armenian ethnicity. It appears that the town was looted and burned in the days following the takeover. According to information obtained by the respondent Government from the authorities of the "NKR", the city of Lachin and the surrounding villages of Aghbulag, Chirag and Chiragli were completely destroyed during the military conflict.

15. In July 1992 the Armenian parliament decreed that it would not sign any international agreement stipulating that Karabakh remain a part of Azerbaijan.

16. According to a Human Rights Watch ("HRW") report ("Seven Years of Conflict in Nagorno-Karabakh", December 1994), the capture of the district of Lachin created approximately 30,000 Azeri displaced persons, many of them of Kurdish descent.

17. Following the capture of Lachin, ethnic Armenian forces continued to conquer four more Azerbaijani districts surrounding Nagorno-Karabakh (Kelbajar, Jabrayil, Gubadly and Zangilan) and substantial parts of two others (Agdam and Fizuli).

18. 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.

19. According to the above-mentioned HRW report, 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

20. According to the respondent Government, the "NKR" controls 4,061 sq. km of the former Nagorno-Karabakh Autonomous Oblast. While it is debated how much of the two partly conquered districts is occupied by the "NKR", it appears that the occupied territory of the seven surrounding districts in total amounts to some 7,500 sq. km.

21. 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. The district of Lachin has a population of between 5,000 and 10,000 Armenians.

22. 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 organisations. 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 have since 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.

23. 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 travelling 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 applicants and property allegedly owned by them in the district of Lachin

24. The applicants have stated that they are Azerbaijani Kurds who lived in the district of Lachin, where their ancestors had lived for hundreds of years. On 17 May 1992 they were forced to flee from the district to Baku. They have since been unable to return to their homes and properties because of Armenian occupation.

(a) Mr Elkhan Chiragov

25. Mr Elkhan Chiragov was born in 1950. He lived in the district of Lachin. In the original application, it was mentioned that he lived in the

village of Chirag, but in the reply to the Government's observations it was stated that his correct home village was Chiragli, where he worked as a teacher for 15 years. He claimed that his possessions included a large furnished house of 250 sq. m, 55 beehives, 80 head of small livestock and nine head of big livestock, and five handmade carpets.

26. On 27 February 2007, together with the applicants' reply to the respondent Government's observations, he submitted an official certificate ("technical passport"), dated 19 July 1985, according to which a two-storey, 12-bedroom dwelling-house with a total area of 408 sq. m (living area 300 sq. m and subsidiary area 108 sq. m) and a storehouse of 60 sq. m, situated on a plot of land of 1200 sq. m, had been registered in his name.

27. He also presented a statement by three former neighbours, who affirmed that he owned a two-storey, 16-room dwelling-house of 260 sq. m as well as a car.

28. Before the Grand Chamber, the applicant submitted, *inter alia*, a marriage certificate according to which he was born in Chiragli and married there in 1978, birth certificates for his son and daughter, both born in Chiragli, in 1979 and 1990 respectively, as well as a 1979 letter and a 1992 employment book issued by the Lachin District Educational Department, showing that he worked as a teacher in Chiragli.

(b) Mr Adishirin Chiragov

29. Mr Adishirin Chiragov was born in 1947. He lived in the district of Lachin. In the original application, it was mentioned that he lived in the village of Chirag, but in the reply to the Government's observations it was stated that his correct home village was Chiragli, where he worked as a teacher for 20 years. He claimed that his possessions included a large furnished house of 145 sq. m, a new "Niva" car, 65 head of small livestock and 11 head of big livestock, and six handmade carpets.

30. On 27 February 2007 he submitted an official certificate ("technical passport") dated 22 April 1986, according to which a two-storey, eight-bedroom dwelling-house with a total area of 230.4 sq. m (living area 193.2 sq. m and subsidiary area 37.2 sq. m) and a storehouse of 90 sq. m, situated on a plot of land of 1200 sq. m, had been registered in his name.

31. He also presented a statement by three former neighbours, who affirmed that he owned a two-storey dwelling-house with eight rooms.

32. Before the Grand Chamber, the applicant submitted, *inter alia*, a marriage certificate according to which he was born in Chiragli and married there in 1975, birth certificates for his son and two daughters, all born in Chiragli, in 1977, 1975 and 1982 respectively, as well as a USSR passport issued in 1981, indicating Chiragli as place of birth and containing a 1992 registration stamp designating Chiragli as place of residence.

(c) Mr Ramiz Gebrayilov

33. Mr Ramiz Gebrayilov was born in Chiragli in 1960. In 1988 he graduated with a degree in engineering from the Polytechnic Institute in Baku. In 1983, while still studying in Baku, he visited the town of Lachin and was given a 5,000 sq. m plot of land by the State. He claimed that he built a six-bedroom house with a garage on it and lived there with his wife and children until he was forced to leave in 1992. There were also some cattle sheds. He also owned a car repair business called "Auto Service", a shop and a café, which were situated on a further 5,000 sq. m of land that he owned. In addition, he had 12 cows, 70 lambs and 150 sheep.

34. Mr Gebrayilov had been unable to return to Lachin since his departure in 1992. In 2001 Armenian friends went to Lachin and videotaped the condition of the houses in the town. According to the applicant, he could see from the video that his house had been burnt down. He had also been informed by people who left Lachin after him that his house had been burnt down by Armenian forces a few days after he had left Lachin.

35. On 27 February 2007, Mr Gebrayilov submitted an official certificate ("technical passport"), dated 15 August 1986, according to which a two-storey, eight-bedroom dwelling-house with a total area of 203.2 sq. m (living area 171.2 sq. m and subsidiary area 32 sq. m), situated on a plot of land of 480 sq. m, had been registered in his name.

36. He also presented a statement by three former neighbours, who affirmed that he owned a two-storey house with eight rooms.

37. Before the Grand Chamber, the applicant submitted, *inter alia*, a birth certificate and a marriage certificate according to which he was born in Chiragli and married there in 1982, birth certificates for his daughter and two sons, all born in Lachin, in 1982, 1986 and 1988 respectively, as well as an army book issued in 1979.

(d) Mr Akif Hasanof

38. Mr Akif Hasanof was born in 1959 in the village of Aghbulag in the district of Lachin. He worked there as a teacher for 20 years. He claimed that his possessions included a large furnished house of 165 sq. m, a new "Niva" car, 100 head of small livestock and 16 head of big livestock, and 20 handmade carpets.

39. On 27 February 2007 he submitted an official certificate ("technical passport"), dated 13 September 1985, according to which a two-storey, nine-bedroom dwelling-house with a total area of 448.4 sq. m (living area 223.2 sq. m and subsidiary area 225.2 sq. m) and a storehouse of 75 sq. m, situated on a plot of land of 1600 sq. m, had been registered in his name.

40. He also presented a statement by three former neighbours, who affirmed that he owned a two-storey, nine-room dwelling-house as well as a stall for livestock and subsidiary buildings.

41. Before the Grand Chamber, the applicant submitted a birth certificate, a USSR passport issued in 1976 and an employment book issued by the Lachin District Educational Department, indicating that he was born in Aghbulag and had worked as a teacher and school director in that village between 1981 and 1988.

(e) Mr Fekhreddin Pashayev

42. Mr Fekhreddin Pashayev was born in 1956 in the village of Kamalli in the district of Lachin. After graduating with a degree in engineering from the Polytechnic Institute in Baku in 1984, he returned to the town of Lachin where he was employed as an engineer and, from 1986, as chief engineer at the Ministry of Transport. He claimed that he owned and lived in a two-storey, three-bedroom house in Lachin which he had built himself. The house was situated at no. 50, 28 Aprel Kucesi, Lachin Seheri, Lachin Rayonu. Mr Pashayev submitted that the current market value of the house would be 50,000 US dollars. He also owned the land around his house and had a share (about ten hectares) in a collective farm in Kamalli. Furthermore, he owned some land by means of "collective ownership".

43. On 27 February 2007 he submitted an official certificate ("technical passport"), dated August 1990, according to which a two-storey dwelling-house with a total area of 133.2 sq. m (living area 51.6 sq. m and subsidiary area 81.6 sq. m), situated on a plot of land of 469.3 sq. m, had been registered in his name.

44. He also presented a statement by three former neighbours, who affirmed that he owned a two-storey, four-room dwelling-house.

45. Before the Grand Chamber, the applicant submitted, *inter alia*, a marriage certificate according to which he was born in Kamalli and married there in 1985, birth certificates for his two daughters, born in Kamalli in 1987 and in Lachin in 1991 respectively, a birth certificate for his son, registered as having been born in Kamalli in 1993, as well as an army book issued in 1978 and an employment book dated in 2000. He explained that, while his son had in fact been born in Baku, it was normal under the USSR *propiska* system to record a child as having been born at the parents' registered place of residence.

(f) Mr Qaraca Gabrayilov

46. Mr Qaraca Gabrayilov was born in the town of Lachin in 1940 and died on 19 June 2005. On 6 April 2005, at the time of submitting the present application, he stated that, when he was forced to leave on 17 May 1992, he had been living at holding no. 580, N. Narimanov Street, apt 128a in the town of Lachin, a property he owned and which included a two-storey residential family house built in 1976 with a surface of 187.1 sq. m and a yard area of 453.6 sq. m. He also claimed that he owned a further site of 300 sq. m on that street. Annexed to the application, he submitted an official

certificate ("technical passport"), dated August 1985, according to which a two-storey house with a yard, of the mentioned sizes, had been registered in his name.

47. On 27 February 2007 the applicant's representatives submitted, however, that he had been living at 41 H. Abdullayev Street in Lachin. Still, he owned the two properties on N. Narimanov Street. Attached to these submissions was a statement by three former neighbours and a statement by V. Maharramov, Lachin City Executive Power Representative of the Azerbaijan Republic, who stated that Mr Gabrayilov had used to live in his own house at H. Abdullayev Street. Attached were also a decision of 29 January 1974 by the Lachin District Soviet of Popular Deputies to allocate the above-mentioned plot of 300 sq. m to the applicant and several invoices for animal feed, building materials and building subsidies allegedly used during the construction of his properties.

48. On 21 November 2007 Mr Sagatel Gabrayilov, the son of the applicant, stated that the family had used to live at N. Narimanov Street but that, on some unspecified date, the name and numbering of the street had been changed and their address was thereafter H. Abdullayev Street. Thus, the two addresses mentioned above referred to the same property.

49. Before the Grand Chamber, the applicant's representatives submitted, *inter alia*, a birth certificate and a marriage certificate according to which he was born in Chiragli and married there in 1965, a birth certificate for his son, born in Alkhasli village in the district of Lachin in 1970, as well as an army book issued in 1963.

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

50. 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 221 (2000) on Armenia's application for membership of the Council of Europe read as follows:

> "10. The Assembly takes note of the letter from the President of Armenia in which he undertakes to respect the cease-fire agreement until a final solution is found to the conflict [in Nagorno-Karabakh] and to continue the efforts to reach a peaceful negotiated settlement on the basis of compromises acceptable to all parties concerned.
>
> ...

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

...

ii. the conflict in Nagorno-Karabakh:

a. to pursue efforts to settle this conflict by peaceful means only;

b. to use its considerable influence over the Armenians in Nagorno-Karabakh to foster a solution to the conflict;

c. 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)13 by the Committee of Ministers concerning the invitation to Armenia to become a member of the Council of Europe refers to the commitments entered into by Armenia, as set out in Opinion 221 (2000), and the assurances for their fulfilment given by the Armenian Government.

COMPLAINTS

51. The applicants complained under Article 1 of Protocol No. 1 that the loss of all control over as well as all potential to use, sell, bequeath, mortgage, develop and enjoy their properties constituted an interference with their right to peaceful enjoyment of their possessions. They submitted that this interference amounted to a continuing violation of Article 1 of Protocol No. 1, since it was the result of a territory being occupied. They alleged that they had been forced to leave their homes as a result of the actions of Armenian-backed Karabakh forces and had been prevented from returning to their properties by these occupying forces. There was no prospect of their being permitted to return to their properties or anywhere in the occupied territories in the foreseeable future. Furthermore, the applicants feared that their properties had been destroyed and pillaged in the days following their flight. They claimed that the deprivation of their property rights had not been in accordance with law and the general principles of international law. Moreover, there had been no attempt by the Armenian authorities to compensate them for their losses. Finally, whatever the aim of the occupation of Lachin, their total exclusion from their properties and the destruction of those properties could not be regarded as having been proportionate to the achievement of that aim.

52. The applicants further complained under Article 8 of the Convention that their right to respect for their private and family life and their homes

had been infringed by the respondent Government's continuing refusal to allow them to return to Lachin. This interference was not justified under Article 8 § 2 of the Convention. Furthermore, the respondent Government were in breach of their positive obligations to protect the rights of the applicants enshrined in this Article.

53. Moreover, the applicants complained under Article 13 of the Convention that the respondent Government had failed to provide an effective or any remedy to persons displaced from the occupied territories and, in particular, to the applicants, in respect of the violations of Article 1 of Protocol No. 1 and Article 8 of the Convention.

54. Finally, the applicants claimed, under Article 14 of the Convention in conjunction with all above Articles, that they had been subjected to discrimination in their treatment by the respondent Government by virtue of ethnic and religious affiliation since, if they had been ethnic Armenian and Christian, they would not have been forcibly displaced from their homes by the Armenian-backed Karabakh forces. Furthermore, the respondent Government had failed to recognise their property rights and to investigate their complaints because of their ethnic and religious status. They also submitted that they had been subjected to indirect discrimination by the respondent Government since the actions taken by the Armenian military and the Armenian-backed Karabakh forces had disproportionately affected Azerbaijani Kurds, who were individuals belonging to an identifiable group.

THE LAW

I. PRELIMINARY ISSUES

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

- pursuance of the application lodged by the sixth applicant;
- another international procedure;
- jurisdiction and responsibility of the respondent State;
- the Court's jurisdiction *ratione temporis*;
- the applicants' status as victims;
- exhaustion of domestic remedies;
- compliance with the six-month rule.

A. The right of the sixth applicant's son to pursue the application

56. Mr Sagatel Gabrayilov, the son of the sixth applicant, expressed the wish to continue the proceedings before the Court. It has not been disputed that he is entitled to pursue the application on his father'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. Another procedure of international investigation or settlement

1. The parties' submissions

(a) The respondent Government

57. Referring to the ongoing negotiations conducted within the Minsk Group of the OSCE – which comprise questions relating to resettlement of refugees and internally displaced persons as well as compensation issues – the Armenian Government submitted that the matters raised in the present application had already been submitted to another international institution for settlement. Consequently, the Government claimed that the application failed to comply with the requirements of Article 35 § 2 (b) of the Convention.

(b) The applicants

58. The applicants maintained that the negotiations within the Minsk Group were not judicial or quasi-judicial proceedings similar to those set up by the Convention. The applicants were not individual parties to that process. Thus, they claimed that the present application was not substantially the same as the issues relating to refugees dealt with by the OSCE and that, accordingly, the application complied with Article 35 § 2 (b).

(c) The Azerbaijani Government, third-party intervener

59. The Azerbaijani Government submitted that the OSCE did not have a procedure for investigation of an individual application within the meaning of the Convention. Thus, as the present application had not been – and could not be – submitted to the OSCE for settlement, the negotiations within that organisation could not be seen as a "procedure of international investigation or settlement" within the meaning of Article 35 § 2 (b).

2. The Court's assessment

60. Article 35 § 2 of the Convention provides, in so far as relevant, the following:

"The Court shall not deal with any application submitted under Article 34 that

...

(b) is substantially the same as a matter that ... has already been submitted to another procedure of international investigation or settlement and contains no relevant new information."

61. The Court notes that a criterion for finding that the application before the Court is substantially the same as another matter is that the latter has been submitted by way of a petition lodged formally or substantively by the same applicants (see *Varnava and Others v. Turkey*, nos. 16064-66/90 and 16068-73/90, Commission decision of 14 April 1998, Decisions and Reports 93, p. 5, at p. 14, and *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006). This is not the case with the interstate talks conducted within the OSCE, where the applicants are not parties and which cannot examine whether the applicants' individual rights have been violated. In these circumstances, the Court considers that the OSCE proceedings do not constitute a "procedure of international investigation or settlement" of the matters which are the subject of the present application (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, 14902/04, §§ 520-526, 20 September 2011).

62. Consequently, the Court rejects the respondent Government's objection under Article 35 § 2 (b) of the Convention.

C. Jurisdiction and responsibility of the respondent State

1. The parties' submissions

(a) The respondent Government

63. The Armenian Government submitted that the jurisdiction of the Republic of Armenia did not extend to the territory of Nagorno-Karabakh and the surrounding regions. Allegedly, the Republic of Armenia did not and could not have effective control of or exercise any public power on these territories.

64. The Armenian Government asserted that the Republic of Armenia had not participated in the military conflict in Nagorno-Karabakh and the surrounding regions. The military actions had been conducted by the "NKR", in self-defence against Azerbaijani attacks following the proclamation of the "NKR". The Armenian Army had not and could not participate in these actions. This was shown by the fact that there was not a single mention of the Armenian Army's participation in any international document. Instead, these documents talked about "local Armenian forces". Nor had the authorities of the Republic of Armenia adopted any legal acts or programmes or taken other official steps to get involved in the actions. Instead, the self-defence had been conducted by the "NKR Defence Army", which had been established in early 1992 following the enactment of the "NKR" Law on Conscription. It had been assisted by the Armenian

population in Nagorno-Karabakh and the surrounding regions as well as volunteers of Armenian origin from various countries. The Republic of Armenia had only been involved in the war in so far as it had defended itself against Azerbaijani attacks on territory within the recognised borders of Armenia.

65. Furthermore, the Republic of Armenia did not currently have any military presence in Nagorno-Karabakh and the surrounding regions. No military detachment, unit or body was stationed there. In the district of Lachin there were no military units at all, as Lachin was at a considerable distance from the "NKR" border with Azerbaijan and there was thus no military need to keep units there. It could not be ruled out that some Armenian nationals may have served in the "NKR Defence Army" on a contractual and voluntary basis. Also, according to an agreement on military cooperation signed on 25 June 1994 by the Armenian and "NKR" Governments, draftees from the Republic of Armenia, upon their consent, may perform their military service in the "NKR" and vice versa, as well as participate in military exercises organised in the "NKR" or in Armenia. However, only a small number of Armenian volunteer conscripts had served in Nagorno-Karabakh where, moreover, they had been under the direct command of the "NKR Defence Army". The presence of these conscripts did not amount to effective control or occupation by the Republic of Armenia. The present case was thus clearly distinguishable from the case of *Loizidou v. Turkey* ([GC], no. 15318/89, ECHR 1996-VI).

66. The Armenian Government further submitted that the "NKR", since its formation, carried out its political, social and financial policies independently. The Republic of Armenia did not provide any economic help to the "NKR" except that, for several years, it had provided the "NKR" with long-term loans for the implementation of specific projects, including the rebuilding of schools and other educational institutions and the provision of financial help to the families of killed soldiers. Such help had been provided by other countries as well. Moreover, the "All Armenian Fund", registered in the United States, played a great role in the development of the "NKR". It had branches in 19 countries and had as its main mission to provide financial help to Armenia and the "NKR", using resources collected by the Armenian Diaspora. While there were seven representatives of Armenia on the Board of Trustees, the majority of the board's 24 members were collected from the Armenian Diaspora and the "NKR". The fund had provided 85 million US dollars to the "NKR" for the rebuilding of roads and other infrastructure. Further resources were provided by other funds and international organisations. Charity and international investments in the "NKR" annually accounted for 20-30 and 30-40 million US dollars respectively.

67. In the view of the Armenian Government, the "NKR" was a sovereign, independent state possessing all the characteristics of an

independent state in accordance with international law. It exercised control and jurisdiction of Nagorno-Karabakh and the territories surrounding it. Only the laws and other legal acts of the "NKR" were applied on these territories, political elections were held and "NKR" passports were issued to its citizens, who had political rights and civil obligations on the basis of their citizenship. Currencies used were the US dollar, the euro and the Armenian dram. Armenia's political support was limited to taking part in the settlement negotiations conducted within the framework of the OSCE Minsk Group, with a view to regulate the Nagorno-Karabakh conflict.

68. In conclusion, the Armenian Government maintained that the present application failed to meet the requirements of Article 35 § 3 of the Convention *ratione loci*.

(b) The applicants

69. The applicants submitted that the Republic of Armenia exercised effective control over Nagorno-Karabakh and, more specifically, Lachin, and that their complaints therefore fell within the jurisdiction of Armenia in accordance with Article 1 of the Convention.

70. The applicants claimed that Armenia's military participation in the Nagorno-Karabakh conflict had been considerable. They submitted, *inter alia*, that Armenian conscripts had served in Nagorno-Karabakh. According to the above-mentioned HRW report of 1994, Armenian conscripts had been sent to Nagorno-Karabakh and the surrounding Azerbaijani provinces, and military forces – not volunteers – from the Republic of Armenia had taken part in fighting in Azerbaijan. Thirty per cent of the Armenian uniformed soldiers interviewed by HRW on the streets of Yerevan had been draftees in the Armenian Army who had either fought in Karabakh, had orders to go to Karabakh or had ostensibly volunteered for service there. Moreover, on a single day in 1994 HRW researchers had counted five buses holding an estimated 300 soldiers of the Armenian Army entering Nagorno-Karabakh from Armenia. Other western journalists had reported to HRW researchers that they had seen more buses full of Armenian Army soldiers heading for Azerbaijani territory from Armenia.

71. The applicants also referred to statements by various political leaders and observers. In reference to fighting in April 1993 in the Azerbaijani province of Kelbajar, UN Secretary-General Boutros Ghali had stated that the level of heavy weaponry involved on the Karabakh Armenian side pointed towards Armenian Army involvement. On 1 February 1994 Robert Kocharyan, then Prime Minister of Nagorno-Karabakh, had admitted in *Golos Armenii*, an Armenian newspaper, that the Republic of Armenia had supplied anti-aircraft weapons to Nagorno-Karabakh. In 2000 President Clinton had submitted to the United States Congress: "The actions taken by the Government of Armenia in the context of the conflict over Nagorno-Karabakh are inconsistent with the territorial integrity and national

sovereignty principles of the Helsinki Final Act. Armenia supports Nagorno-Karabakh separatists in Azerbaijan both militarily and financially. Nagorno-Karabakh forces, assisted by units of the Armenian armed forces, currently occupy the Nagorno-Karabakh region and surrounding areas in Azerbaijan." Moreover, Vazgen Manukyan, appointed as Armenian Defence Minister in October 1992, had admitted in an interview in October 2000 that the public declarations that the Armenian Army had taken no part in the war had been purely for foreign consumption: "You can be sure that, whatever we said politically, the Karabakh Armenians and the Armenian Army were united in military actions. It made no difference to me whether someone was a Karabakhi or an Armenian."

72. The applicants also adduced as evidence of the involvement of the Armenian Army in the fighting the capture of a number of its soldiers by Azerbaijani units and the increased Armenian draft requirements at the material time. They further submitted that conscripts of the Armenian Army were still sent to serve in Nagorno-Karabakh, that such service entitled the officers and soldiers to higher salaries than if they had served in Armenia and that conscripts had no choice as to where they would like to be deployed, in Armenia or in Nagorno-Karabakh. In support of this assertion, they referred, *inter alia*, to several judicial and administrative proceedings that had been taken in Stepanakert against Armenian military personnel and an Armenian conscientious objector.

73. In addition to committing troops to the conflict, the Republic of Armenia had, according to the applicants, provided material aid to Nagorno-Karabakh. Allegedly, Armenia supplied as much as 90% of the enclave's budget in the form of interest-free credits. These credits constituted financial assistance which contributed to the Armenia's effective control over Nagorno-Karabakh and the surrounding territories. As to the "All Armenian Fund", the applicants submitted that it could not be seen as a distinct body independent of the Armenian Government, as it had been established by Presidential Decree, as its charter designated the Armenian President as President of the Board of Trustees and as that board otherwise included several of the highest-ranking representatives of the Armenian Government, Parliament, Constitutional Court and Central Bank. Furthermore, its mission was to support sustainable development in both Armenia and Nagorno-Karabakh.

74. Moreover, the Republic of Armenia had provided and continued to provide political support to Nagorno-Karabakh. Numerous key figures in Armenian politics had close ties to and continued to be involved in the political sphere in Nagorno-Karabakh. In August 1993 the Armenian Government had appointed Serzhik Sargsyan, the Defence Minister of Nagorno-Karabakh, as Defence Minister of Armenia. In 1998 Robert Kocharyan had become President of Armenia, after having previously been the Prime Minister and President of Nagorno-Karabakh. Also, as the

"NKR" remained unrecognised by the international community, it was reliant on Armenia for political support and its ability to enter into relations with other states.

75. The applicants further submitted that, in Nagorno-Karabakh, many laws of the Republic of Armenia were applied and the Armenian dram was the main currency in use. Moreover, people from Nagorno-Karabakh were issued with Armenian passports for the purpose of travelling abroad.

76. In conclusion, the applicants claimed that the Republic of Armenia exercised effective control over Nagorno-Karabakh or, alternatively, that the "NKR" were under the authority of Armenian agents operating in Nagorno-Karabakh and that, consequently, their complaints fell within Armenia's jurisdiction under Article 1 of the Convention.

(c) The Azerbaijani Government, third-party intervener

77. The Azerbaijani Government agreed with the applicants that the Republic of Armenia in practice had overall control of Nagorno-Karabakh and the surrounding territories, including the Lachin area. They invoked statements by various international and non-governmental organisations as well as the US Department of State in claiming that, at the beginning of the 1990s, Armenian forces, fighting beside separatist Karabakhi forces, had occupied Nagorno-Karabakh as well as Lachin and the other surrounding territories and that these territories continued to be occupied by Armenia, which had soldiers stationed there. In the latter respect, they referred to the Court's cases of *Harutyunyan v. Armenia* (no. 36549/03, judgment of 28 June 2007) and *Zalyan, Sargsyan and Serobyan v. Armenia* (nos. 36894/04 and 3521/07). The "NKR" was not an independent state, as claimed by the respondent Government, but a subordinate local administration surviving by virtue of the military and other support provided by the Republic of Armenia. Allegedly, Armenia was providing military equipment, weaponry and training to the local Karabakhi forces and there was a high degree of integration between the forces of the Republic of Armenia and those of the "NKR".

78. The Azerbaijani Government also submitted that there were close links between Nagorno-Karabakh and the Republic of Armenia which, moreover, had a strong personal element at the highest political level. Furthermore, economic aid provided by Armenia was essential for the "NKR". In addition to the "All Armenian Fund", which allegedly had to be seen as an organ of the Armenian State in relation to the aid given to Nagorno-Karabakh, the Azerbaijani Government referred to a report of the International Crisis Group of 14 September 2005, according to which loans from the Armenian State had accounted for 67.3% of the "NKR" budget in 2001 and 56.9% in 2004.

2. The Court's assessment

79. Article 1 of the Convention reads as follows:

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

80. The Court has to examine whether the matters complained of come under the jurisdiction of the respondent Government and hence engage its responsibility under the Convention.

81. The respondent Government submitted that the Republic of Armenia did not have effective control of or exercise any public power in Nagorno-Karabakh and the surrounding regions, in particular the district of Lachin. They claimed that Armenia had not participated in the military conflict on these territories and did not have any military presence there now. Nor had Armenia given the "NKR" such political, social or financial support or been involved in any other way which could engage Armenia's responsibility under the Convention. The applicants and the third-party Government disputed this.

82. The Court reiterates the principles it has set out in the case of *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-VII):

> "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 the *Banković* case it emphasised the preponderance of the territorial principle in the application of the Convention (decision cited above, § 80), it 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. 2234-2235, § 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 in practice exercises 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 (*ibid.*, pp. 2235-2236, § 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* [GC], 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, p. 104, and the *Cairo* case heard by the General Claims Commission, (1929) Reports of International Arbitral Awards 5 (RIAA), p. 516)."

83. 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).

84. 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 State's jurisdiction and responsibility in regard to the claims submitted by the applicants. Furthermore, these issues are closely linked to the merits of the case. The Court therefore decides to join this objection to the merits.

D. The Court's jurisdiction *ratione temporis*

1. The parties' submissions

(a) The respondent Government

85. The Armenian Government submitted that the alleged violations of the applicants' rights under the Convention had occurred before the ratification of the Convention by the Republic of Armenia. Whereas said ratification had been made on 26 April 2002, the alleged violations had taken place on 17-18 May 1992 when control of the town of Lachin and the surrounding territories had been taken by the "NKR Defence Army".

86. They argued that the applicants had been deprived of their alleged property by one instantaneous act which could not have produced a continuing situation. Answering a query by the Armenian Government, the "NKR" Government had stated that the town of Lachin as well as the surrounding villages Aghbulag, Chirag and Chiragli had been completely destroyed. Consequently, the property allegedly owned by the applicants had also been destroyed. As the property in question had not existed since 1992, the applicants could not have had or enjoyed any rights under the Convention since that time.

87. In any event, the Armenian Government pointed out, the applicants had never applied to the Armenian or "NKR" authorities for permission to enter the territory where they allegedly had lived and where their alleged property was situated. Consequently, they had not been refused such access.

88. At the hearing before the Grand Chamber, the Armenian Government further claimed that, in 1998, the authorities of the "NKR" had enacted a law on privatisation and a land code, which had extinguished the right to land abandoned by people who had left the occupied territories and instead had recognised the right of ownership to that land for the people who actually lived there, being permanent inhabitants and citizens of the "NKR". From the moment of enactment of this law, thus before Armenia's

ratification of the Convention, the applicants had lost *de jure* their alleged rights to the land.

89. In conclusion, the Armenian Government maintained that the present application failed to meet the requirements of Article 35 § 3 of the Convention *ratione temporis*.

(b) The applicants

90. The applicants maintained that the Republic of Armenia was responsible for a continuing violation of their rights. Stating that the respondent Government erroneously focused on the buildings which may or may not have been destroyed, they stressed that they still owned the land on which these buildings had been situated. No act of expropriation had deprived them of ownership. Therefore, the allegedly continuing refusal by the Republic of Armenia to allow the applicants to return to Lachin had resulted in the continuing loss of all control over as well as all potential to use, sell, bequeath, mortgage, develop and enjoy the property which they still owned, in breach of Article 1 of Protocol No. 1 to the Convention.

91. This situation also involved continuing violations of the applicants' right to their homes and the right to respect for their family life under Article 8 of the Convention. Unlike the applicant in *Loizidou v. Turkey* (cited above), the present applicants had lived for many years in the area of Lachin, where they all had established homes and private and family life.

(c) The Azerbaijani Government, third-party intervener

92. The Azerbaijani Government asserted that, in the instant case, there were continuing violations of Articles 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 and that the Court, therefore, had jurisdiction *ratione temporis*. They submitted that Azerbaijani internally displaced persons, including the applicants, were physically prevented from returning home through the deployment of Armenian military forces and land mines on the Line of Contact, which separated Lachin and the other occupied territories from the rest of Azerbaijan. The Azerbaijani Government pointed out that "possessions" protected under Article 1 of Protocol No. 1 included not only houses but also plots of land. Thus, even if the applicants' houses had been destroyed, the land was still owned by the applicants, who could continue to use it for building, farming or commercial purposes.

2. The Court's assessment

(a) The Court's case-law

93. 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).

94. The Republic of Armenia ratified the Convention on 26 April 2002. Accordingly, the Court is not competent to examine applications against Armenia in so far as the alleged violations are based on facts which took place or situations which ceased to exist before that date.

95. 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 26 April 2002.

96. 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).

97. 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).

98. 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.

99. 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 form 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.

100. 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

101. The Court observes that the respondent Government argued that the alleged violations of the applicants' rights had occurred on 17-18 May 1992

when, as a result of an instantaneous act, they had been deprived of their alleged property. As the villages where the applicants claimed to have lived had been completely destroyed, so had their alleged houses and property. Consequently, they could not have had or enjoyed any rights under the Convention since that time. Indeed, should the houses 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 applicants referred from the beginning also to the plots of land on which their houses had been situated. Moreover, the Court considers that the applicants have at least submitted *prima facie* evidence regarding their alleged property and residence in the district of Lachin which allows the Court to proceed with the case at the admissibility stage. At the present time 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 applicants indeed had homes and property in Lachin must be reserved to a detailed examination of the facts and legal issues of the case at the merits stage.

102. At a late stage of the proceedings, the Armenian Government introduced the claim that the authorities of the "NKR", in 1998, had enacted a law on privatisation and a land code, which had extinguished the land rights of the applicants and other people who had fled the occupied territories. The texts of these laws have not been submitted to the Court. In any event, the Court notes that the "NKR" is not recognised as a State under international law by any countries or international organisations. Against this background, the invoked laws cannot be considered legally valid for the purposes of the Convention and the applicants cannot be deemed to have lost their alleged rights to the land in question by virtue of these laws (see *Loizidou* (merits), cited above, §§ 42-47).

103. Instead, the Court considers that the case resembles the case of *Doğan and Others* (cited above). The applicants were displaced from the villages at issue in the context of an armed conflict. While the parties differ as to the reasons preventing the applicants from returning, it does not appear to be in dispute that they had no access to their alleged homes and property since their flight in May 1992. The Court therefore considers that the applicants, who may still be regarded as legal owners of their alleged property, are faced with a factual situation depriving them of access to that property and their homes. In the light of the Court's case-law, such a situation is to be regarded as a continuing one.

104. While the applicants' displacement in 1992 is to be considered as resulting from an instantaneous act falling outside the Court's competence *ratione temporis*, their ensuing lack of access to their alleged property and

homes is to be considered as a continuing situation, which the Court has had competence to examine since 26 April 2002.

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

E. Lack of "victim" status of the applicants

1. The parties' submissions

(a) The respondent Government

106. The Armenian Government pointed out that, with the exception of the sixth applicant, Mr Qaraca Gabrayilov, the applicants had not submitted with their application any evidence that could prove that they in fact had any property, let alone that the property was located on the territory claimed and that they had owned it at the relevant time. As for the third applicant, he had submitted certain documents concerning the existence of some property. In respect of all applicants, the Government maintained that they had failed to prove "beyond reasonable doubt" that they were the persons they claimed to be, that they had resided in the territories specified by them or that they owned the property in question. In particular, the documents provided by them contained numerous contradictions and inaccuracies. For instance, the second applicant, Mr Adishirin Chiragov had first claimed to have lived in the village of Chirag and had then changed this to Chiragli. Moreover, the "technical passports" submitted as proof of ownership often gave different figures with regard to the size of the houses than the figures stated by the applicants themselves. Also the statements about the residence of the third applicant were inconsistent and, in the Government's opinion, indicated that he had submitted documents relating to a house that did not belong to him.

(b) The applicants

107. The applicants asserted that the documentation submitted with their application and their observations constituted sufficient proof of their identity and of the fact that they owned identifiable property in the territory in question and that they had been residing there when they had had to flee in May 1992. They stated that, despite being displaced persons without access to the area from which they had been abruptly forced to flee, they had submitted numerous pieces of evidence and had thus discharged their burden of proof.

(c) The Azerbaijani Government, third-party intervener

108. The Azerbaijani Government supported the applicants' position that their case was sufficiently substantiated, as regards the alleged facts as well as the evidence presented. They stated that almost all Azerbaijani

displaced persons had had to flee their homes in the occupied territories quickly, without having the time to collect documents which thus had been mostly left behind. At the present time, it was impossible to obtain those documents which, moreover, could be assumed to have been destroyed.

2. The Court's assessment

109. The respondent Government in essence claimed that the applicants had not shown that they were "victims" of the violations alleged, as they had failed to provide sufficient and convincing evidence of their personal identity and the existence and their ownership of the property referred to by them. The applicants and the third-party Government, however, maintained that the applicants had sufficiently substantiated that they owned property in the district of Lachin, which they had been forced to leave behind in May 1992 and to which they had since been prevented from returning.

110. 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. Exhaustion of domestic remedies

1. The parties' submissions

(a) The respondent Government

111. The Armenian Government referred to the case-law of the Court in claiming that it was the task of the applicants to show that they had taken steps aimed at exhausting domestic remedies and that, only after this, it was incumbent on the respondent State to prove that those remedies had been effective and sufficient. According to the Armenian Government, the applicants had failed to exhaust domestic remedies, as they had not shown that they had taken any steps in order to protect or restore their rights. In particular, the Government stated that the applicants had not substantiated that they had applied to any judicial or administrative body of the Republic of Armenia. Furthermore, maintaining that the territories mentioned by the applicants were under the jurisdiction and control of the "NKR", the Government claimed that the "NKR" had all the judicial and administrative bodies capable of protecting the rights of individuals. Only after the applicants had applied to the authorities of the "NKR" could they argue their ineffectiveness or non-existence.

112. In order to show the effectiveness of Armenian remedies for people of Kurdish or Azeri ethnicity, the Government submitted three court cases: one concerned the amnesty granted to a convicted person of, allegedly, Azerbaijani nationality, one related to the friendly settlement reached between a Kurdish person and his employer in a dispute about unpaid salary and one concerned the dispute between another Kurdish person and a local

Armenian administration over the prolongation of a land lease contract. Furthermore, the Government submitted three cases examined by "NKR" courts to demonstrate that there were effective judicial remedies in that region: two concerned the criminal convictions of persons of Armenian ethnicity living in the "NKR" and the remaining one was about an inheritance dispute between two private individuals, apparently of Armenian ethnicity.

(b) The applicants

113. The applicants submitted that the Armenian authorities' refusal to allow them as displaced persons to return to their homes reflected an acknowledged official policy and, accordingly, an administrative practice. In these circumstances, they did not have access to any domestic remedies.

114. Moreover, there were no remedies known to them – either in the Republic of Armenia or in Nagorno-Karabakh – that could be effective in respect of their complaints. Allegedly, the lack of domestic remedies was most clearly shown by the international discussions regarding the right of return of internally displaced persons in Azerbaijan. Constituting one of the major differences between the parties to the ongoing peace process, this issue remained unresolved. In this light, it was impossible to see that there could be any remedies which the applicants could or should have exhausted. Furthermore, given the denial of the Republic of Armenia of any involvement in the events relating to the conflict in Nagorno-Karabakh, the applicants asserted that it would be contradictory to have expected them to have approached the authorities of the Republic of Armenia.

115. The applicants further maintained that the respondent Government bore the burden of proof to show that a remedy existed and that it was effective both in theory and in practice, namely that it was accessible, capable of providing redress in respect of the applicants' complaints and offered reasonable prospects of success.

(c) The Azerbaijani Government, third-party intervener

116. According to the Azerbaijani Government, the respondent Government had failed to fulfil their obligation to specify which remedies existed in either the Republic of Armenia or the "NKR" that could be effective in the circumstances and had further failed to provide any example of a displaced Azerbaijani national having had successful recourse to such claimed, if totally unspecified, remedies. In this connection, they stated, *inter alia*, that the person granted amnesty in the first domestic court case referred to by the Armenian Government was in fact of Iranian – and not Azerbaijani – nationality.

117. Furthermore, in the light of the general context, there was allegedly no need to exhaust domestic remedies due to administrative practices or special circumstances. The Azerbaijani Government submitted that the

general context was characterised by a situation of continuing tension and hostility, which could be termed an armed truce. In particular, the Line of Contact between Armenian and Azerbaijani forces was mined and guarded, and any attempt to cross that line was highly dangerous. Furthermore, martial law was applied within Nagorno-Karabakh and the other occupied territories and there was a deliberate policy of encouraging Armenian settlers to move into, in particular, the district of Lachin.

118. The Azerbaijani Government further asserted that any remedies that the respondent Government would argue were available before the Armenian courts and organs could not by definition be effective in view of Armenia's declared view that the "NKR" was an independent state within whose jurisdiction and control Lachin was to be found. Moreover, the territorial framework relevant to the "NKR" "declaration of independence" in September 1991 excluded the other areas of Azerbaijan occupied later, including Lachin, over which, accordingly, the "NKR" courts were constitutionally incapable of exercising jurisdiction.

2. The Court's assessment

119. The respondent Government claimed that there were effective remedies, both in the Republic of Armenia and the "NKR", which could have provided the applicants with redress in respect of their complaints under the Convention, but the applicants had not shown that they had taken any steps before a judicial or administrative body in order to protect or restore their rights. The applicants and the third-party Government asserted, however, that there were no effective remedies which the applicants could have been obliged to exhaust.

120. 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.

G. The six-month rule

1. The parties' submissions

(a) The respondent Government

121. The Armenian Government submitted that, even if it were assumed that the present application concerned a continuing situation and the applicants were absolved from exhausting domestic remedies, the six-month period in the case should be calculated from the date when Armenia ratified the Convention, 26 April 2002. It was alleged that, otherwise, the six-month rule would lose its meaning and purpose and any person would be able to submit an application to the Court concerning an event which had occurred in history at any time he or she deemed appropriate. Moreover, referring to the Court's judgment in *Varnava and Others v. Turkey* ([GC],

ECHR 2009-...), the Government asserted that that the applicants had failed to show the necessary diligence and expedition in bringing their application to the Court, having waited 13 years from the events leading to the alleged violation of their rights and three years from Armenia's ratification of the Convention. While the applicants had stated that they had not been aware of that ratification until the end of October 2004, they had signed the powers of attorney for the purpose of the present application already on 3 August 2004. In these circumstances, the six-month period should be calculated at least from that date.

122. Accordingly, the Armenian Government maintained that the applicants had failed to comply with the requirements of the six-month rule under Article 35 § 1 of the Convention.

(b) The applicants

123. The applicants submitted that, as they were complaining of a continuing situation, the six-month rule did not apply. Furthermore, they claimed that, although the Convention had been ratified by Armenia on 26 April 2002, they had not become aware of the fact that the Court had jurisdiction over the situation in Armenia until the end of October 2004 when the Court had delivered its first judgment against Armenia. In considering the delay in lodging the present application, account had to be had to their status as displaced persons suffering the effects of the very violations of which they were complaining. They had also awaited the efforts of the international community, expecting that these would secure their return to their homes.

(c) The Azerbaijani Government, third-party intervener

124. The Azerbaijani Government agreed with the applicants that the six-month rule was not applicable as the case concerned a continuing situation. In regard to the Court's findings concerning requirements of expedition in the case of *Varnava and Others* (cited above), they submitted that that case had concerned the very specific context of disappeared persons. According to the Azerbaijani Government, the application of the *Varnava* principles in a property case would appear dubious. Moreover, even if one were to accept the extension of these principles to property and other issues, there had been no excessive or unexplained delay in lodging the present application. In this respect, the Azerbaijani Government asserted that, since the ratification of the Convention by Armenia, there had been constant and meaningful efforts to reach a peaceful settlement of the situation in various international fora, the outcome of which the applicants could justifiably await.

2. The Court's assessment

(a) The Court's case-law

125. 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."

126. 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. ..."

127. 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 European Commission of Human Rights 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).

128. 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).

129. 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.

130. 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."

131. 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).

132. 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).

133. 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

134. 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.

135. 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 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.

136. 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 links 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.

137. 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.

138. 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.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, § 111-113, ECHR 2010-...), 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.

139. 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.

140. 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.

141. 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.

142. 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.

143. Turning to the circumstances of the present case, the Court notes that the applicants introduced their complaints on 6 April 2005. At that time almost thirteen years had elapsed since the applicants' forced displacement from their alleged property and homes in May 1992 and almost eleven 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.

144. The Republic of Armenia ratified the Convention on 26 April 2002. This was thus the earliest point in time at which the applicants could have brought their case before the Court. The Court considers that the assessment whether the applicants introduced the 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 50 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.

145. Thus the applicants, like hundreds of thousands of refugees and 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, the parties' 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 extinguished all hope of a political solution and should thus have made it clear to the applicants that they should introduce his application without undue delay.

146. In any case, the Court considers that another important element has to be taken into account, namely the applicants' personal situations. While the respondent Government questioned whether the applicants actually lived in the district of Lachin at the addresses given by them and whether they actually owned property there, it is apparent that they were displaced during the conflict and had to move to new places of residence, in Baku. They had thus lost their homes and possessions and the sources of income they may have had. At no point in time did the applicants receive information that they could return to Lachin. 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.

147. In the circumstances of the case, the Court concludes that by introducing the present case on 6 April 2005, that is about three years after the ratification of the Convention by Armenia on 26 April 2002, the applicants acted without undue delay.

148. 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.

II. ALLEGED VIOLATIONS OF THE CONVENTION AND ITS PROTOCOLS

A. Article 1 of Protocol No. 1

149. The applicants complained that the loss of all control over, as well as of all potential to use, sell, bequeath, mortgage, develop and enjoy, their properties 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 Armenian Government maintained that the applicants had failed to show "beyond reasonable doubt" that they had resided in the territories specified by them or that they had owned any property there. The Government stated, in this respect, that the documents and other information supplied by the applicants contained numerous and substantial contradictions and inaccuracies. Moreover, the applicants had not been prevented from entering the town of Lachin or the surrounding villages; in fact, they had never tried to enter these territories since their alleged flight and had not applied to the authorities of Armenia or the "NKR" to have any rights of theirs protected or restored. Moreover, the Republic of Armenia did not have effective control of or exercise any public power on the territories in question and was therefore not responsible for any alleged violation of the applicants' rights. The applicants' complaints under Article 1 of Protocol No. 1 to the Convention were thus, in any event, manifestly ill-founded.

151. The applicants maintained that the documents and information submitted by them confirmed their identity and their ownership, or "right of

use", of the property outlined in the application. They submitted that, whether or not the buildings on those properties had been destroyed in 1992, they complained of an interference with all of their property, including land, which remained in Lachin and which they still owned. Referring to the case of *Loizidou v. Turkey* (cited above), the applicants claimed that they had been continuously denied access to that property, resulting in a loss of all control over it and of the potential to use, sell, bequeath, mortgage, develop and enjoy it. Whatever the aim of the occupation of the district of Lachin, the total exclusion of the applicants from their property and the destruction of that property without the payment of compensation could not be seen to have been proportionate to the achievement of that aim. No act of expropriation had extinguished their rights to the property. The interferences had caused economic detriment to the applicants, as they were forced to live as internally displaced persons under extremely harsh conditions. The Republic of Armenia was responsible for this, as it exercised effective control over Nagorno-Karabakh and, more specifically, Lachin.

152. The Azerbaijani Government, third-party intervener, agreed with the arguments submitted by the applicants.

2. The Court's assessment

153. 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

154. The applicants complained that they were denied the right to return to the district of Lachin and to their homes, involving 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."

1. The parties' submissions

155. The Armenian Government presented essentially the same arguments in regard to the applicants' complaints under Article 8 of the

Convention as under Article 1 of Protocol No. 1, adding that, since the houses and the other property allegedly owned by the applicants had been destroyed in 1992, the applicants could not claim to have had any private or family life or a home in the area in question after that date.

156. The applicants stated that the continuing refusal of the respondent Government to allow them to return to the district of Lachin, and more specifically to their homes, violated not only the right to respect for their homes but also the right to respect for their family life. In this respect, they referred to the case of *Cyprus v. Turkey* (cited above). Distinguishing their case from the situation of Mrs Loizidou, the applicants pointed out that they had all lived for many years in the Lachin area and had established homes and private and family lives there.

157. The Azerbaijani Government agreed with the arguments submitted by the applicants.

2. The Court's assessment

158. 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

159. The applicants complained that no effective remedies had been available to them in respect of their above complaints. They 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

160. The Armenian Government claimed that the applicants had had effective administrative and judicial remedies at their disposal, both in the Republic of Armenia and in the "NKR", which did not differentiate between displaced persons or people with other status. The Government referred to the examples of cases given in relation to the issue of exhaustion of domestic remedies. The applicants had failed to make use of these remedies and had not submitted any evidence that the remedies were ineffective or non-existent.

161. The applicants maintained that the respondent Government had failed to provide a remedy to persons displaced from the occupied territories. They asserted that, not being ethnic Armenians, it would have been entirely fruitless for them to seek redress from the authorities of the Republic of Armenia or the "NKR". In their view, there were no remedies that could be effective in respect of their complaints. Moreover, the Government had failed to present any proof to the contrary. The lack of domestic remedies became even more evident when regard was had to the fact that the issue of the right of return of internally displaced persons constituted one of the major disagreements between the parties to the ongoing peace process and, accordingly, remained unresolved.

162. The Azerbaijani Government agreed with the arguments submitted by the applicants.

2. The Court's assessment

163. 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

164. The applicants complained that, in relation to the complaints set out above, they had been subjected to discrimination by the respondent Government by virtue of ethnic and religious affiliation. They relied on Article 14, 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

165. The Armenian Government submitted that no issues arose under Article 14 of the Convention as there were no violations of the other Articles relied on by the applicants. In any event, the applicants had not been subjected to discriminatory treatment, because the military actions in Lachin had been aimed merely at opening a humanitarian corridor between Armenia and Nagorno-Karabakh and had not been directed against the residents of the district. Moreover, Kurds had never been subjected to discrimination in the Republic of Armenia or the "NKR" and the

approximately 1,500 Kurds living in Armenia at present actively participated in social and political life and enjoyed all rights.

166. The applicants claimed that, if they had been ethnic Armenian and Christian rather than Azerbaijani Kurds and Muslim, they would not have been forcibly displaced from their homes by the Armenian-backed forces. The applicants referred to a statement of Mr David Atkinson, rapporteur of the Parliamentary Assembly of the Council of Europe, that "the military action and the widespread ethnic hostilities which preceded it led to large-scale ethnic expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing" (PACE Doc. 10364, 29 November 2004). In any event, the applicants submitted that they had been subjected to indirect discrimination by the Republic of Armenia, since the actions taken by the Armenian military and the Armenian-backed Karabakh forces disproportionately had affected Azerbaijani Kurds, who were individuals belonging to an identifiable group.

167. The Azerbaijani Government agreed with the arguments submitted by the applicants.

2. The Court's assessment

168. 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 by a majority

Dismisses the Government's objection that the matter has already been submitted to another procedure of international investigation or settlement;

Dismisses the Government's objection concerning the Court's jurisdiction *ratione temporis*;

Dismisses the Government's objection concerning the compliance with the six-month rule;

Joins to the merits the Government's objection that they lack jurisdiction and responsibility;

Joins to the merits the Government's objection that the applicants lack "victim" status;

Joins to the merits the Government's objection concerning the exhaustion of domestic remedies;

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

Michael O'Boyle
Deputy Registrar

Nicolas Bratza
President