



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

GRAND CHAMBER

CASE OF CHIRAGOV AND OTHERS v. ARMENIA

(Application no. 13216/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

12 December 2017

This judgment is final but it may be subject to editorial revision.

In the case of Chiragov and Others v. Armenia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President*,
Angelika Nußberger,
Linos-Alexandre Sicilianos,
Ganna Yudkivska,
Robert Spano,
Luis López Guerra,
Nebojša Vučinić,
Paul Lemmens,
Krzysztof Wojtyczek,
Ksenija Turković,
Egidijus Kūris,
Iulia Motoc,
Branko Lubarda,
Mārtiņš Mits,
Armen Harutyunyan,
Lətif Hüseynov,
Jolien Schukking, *judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 28 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 13216/05) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by six Azerbaijani nationals, Mr Elkhan Chiragov, Mr Adishirin Chiragov, Mr Ramiz Gebrayilov, Mr Akif Hasanof, Mr Fekhreiddin Pashayev and Mr Qaraca Gabrayilov (“the applicants”), on 6 April 2005. The sixth applicant died in June 2005. The application was pursued on his behalf by his son, Mr Sagatel Gabrayilov.

2. In a judgment delivered on 16 June 2015 (“the principal judgment”), the Court held that there had been continuing violations of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention and that no separate issue arose under Article 14 of the Convention. In particular, with respect to Article 1 of Protocol No. 1, the Court concluded that, as concerned the period under scrutiny, that is, from 26 April 2002, no aim had been indicated which could justify the denial of access of the applicants to their property and the lack of compensation for this

interference. The Court found the Republic of Armenia responsible for the breaches of the applicants' rights (*Chiragov and Others v. Armenia* [GC], no. 13216/05, § 201, ECHR 2015).

3. Under Article 41 of the Convention the applicants sought just satisfaction amounting to several million euros (EUR) in respect of damage sustained and of costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within twelve months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (§ 222 and point 8 of the operative provisions of the principal judgment).

5. Having failed to reach an agreement, the applicants submitted their observations on 16 June and 28 December 2016 and the Government on 16 September and 30 December 2016.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 and Rule 24 of the Rules of Court.

7. In response to a request from the Government, the Court decides that the examination of the issue of just satisfaction does not require it to undertake a fact-finding mission.

THE LAW

8. Article 41 of the Convention provides:

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

A. Preliminary issues

9. The Government maintained that the applicants had failed to prove that they were holders of rights to property. They asserted that the applicants had not given any explanation as to the origin, provenance or legal significance of the technical passports that had been presented in the case and that these documents therefore could not serve as evidence. In addition, no private right to land had been recognised under the law in force when the applicants had left the district of Lachin in May 1992 and there could not have been a legitimate expectation of being granted such a right ten years later. Moreover, there was purportedly no causal link between the alleged loss of access to property and actions attributable to the respondent Government. Finally, the Government argued that issues concerning

documentation and compensation, among other matters, could – and should – have been the subject of domestic judicial examination before being brought before the Court.

10. The applicant contested the Government’s objections, stating that these issues had already been decided by the Court in the principal judgment.

11. The Court reiterates that, in the principal judgment, it concluded that the applicants’ technical passports provided *prima facie* evidence of title to property (§ 141), and that, taking into account the totality of evidence presented, the applicants had sufficiently substantiated their claims that they were in possession of houses and land at the time of their leaving the district of Lachin (§ 143). Their rights to land and houses constituted “possessions” within the meaning of Article 1 of Protocol No. 1 and had not been extinguished afterwards – legitimately or otherwise – whether before or after Armenia’s ratification of the Convention (§ 149). Their land and houses were also considered to have constituted their “homes” for the purposes of Article 8 of the Convention (§ 150). As regards the causal link between the applicants’ loss of access to their property and the actions of the respondent Government, the Court found that, as from 26 April 2002, the Republic of Armenia was responsible for breaches of the applicants’ rights under Article 1 of Protocol No. 1 (§ 201) and Article 8 of the Convention (§§ 207-208). Furthermore, in so far as the Government argued that the applicants had failed to exhaust domestic remedies in regard to their claims for just satisfaction, the Court notes that it dismissed such an objection in the principal judgment, where it considered that the Government had failed to show the availability to the applicants of a remedy capable of providing redress in respect of their Convention complaints and offering reasonable prospects of success (§ 120). For the same reasons, the Court found the Republic of Armenia responsible for a breach of the applicants’ right to an effective remedy under Article 13 of the Convention (§§ 214-215).

Consequently, the issues raised by the Government are *res judicata* and will not be examined anew in the present judgment. The Government’s objections are therefore dismissed.

B. Damage

1. The applicants’ submissions

12. The applicants claimed compensation for pecuniary and non-pecuniary damage for the period from 26 April 2002, the date on which Armenia ratified the Convention, until today. They stated that, while they greatly miss their homeland in the district of Lachin, they cannot return due to the ongoing conflict and the lack of security.

13. In respect of non-pecuniary damage, the applicants each sought EUR 50,000 for the emotional suffering and distress caused as a result of the continuing violations of Article 1 of Protocol No. 1 and Articles 8 and 13 of the Convention. They stated that their suffering stemmed both from the nature of the attack in 1992 and the ongoing anxiety over the loss of their livelihood, their poor living conditions as internally displaced persons and their inability to provide effectively for their families.

14. As regards pecuniary damage, the applicants submitted individual claims for compensation dated June 2016, comprising claims for the value of or lost rental income from land and houses, for the value of carpets and other household items, cars, fruit trees and bushes, and livestock, for lost income from farming and stockbreeding, other business activities and employment, and for expenditure for alternative accommodation and other increased living expenses in Baku.

15. Having been denied access to their property and thereby the possibility to use and enjoy it, the applicants referred to the Court's approach in cases of continuing violations for assessing the loss suffered with reference to the annual ground rent, calculated as a percentage of the market value of the property, that could have been earned on the property during the relevant period (see *Loizidou v. Turkey* (Article 50), 28 July 1998, § 33, *Reports of Judgments and Decisions* 1998-IV). However, in reality, the applicants claimed, exclusively or additionally, compensation for the full current market value of their land and houses.

16. As proof of their possessions, the applicants submitted technical passports issued between 1985 and 1990, describing their land and houses. Mr Qaraca Gabrayilov also presented a land allocation decision from 1974. Furthermore, they submitted statements by family members, friends, neighbours and co-workers. In support of their claims in relation to land and houses, they presented an evaluation made by the "Working Group on Valuation of Loss and Casualties as a Result of Occupation of Territories of Azerbaijan Republic by Armenian Armed Forces" in Baku on 6 June 2016. No other documentary evidence concerning their possessions and their value was relied upon before the Court.

17. In regard to the condition of their houses, the applicants stated, in their observations on just satisfaction of 9 July 2012 and in their observations on the same issue of 16 June 2016, that, as a result of the military attack in 1992, their properties had been either burnt down or badly damaged. However, annexed to the 2012 submissions were aerial photographs of the town of Lachin and the villages of Chiragli and Aghbulag, obtained from Google in April 2012, with the alleged houses of the applicants or their remaining structures marked. In their reply of 28 December 2016 to the Government's submissions on just satisfaction, the applicants referred to the Google photographs and asserted that their houses were still standing, although they might be derelict or occupied by

other persons. Also in their observations on the merits of the case, the applicants had supplied some satellite images of Lachin, Chiragli and Aghbulag as well as Kamalli village, taken by the Azerbaijani Ministry of Defence in April 2010.

18. The individual claims for pecuniary damage were as follows:

(a) Elkhan Chiragov

19. Mr Elkhan Chiragov, born in 1950, who is married and has four children, had two teaching jobs in Chiragli. In the application to the Court, submitted in April 2005, he declared that, following his displacement, he received his teacher's salary and a monthly government supplement of 25,000 manat (presumably Azerbaijani "old" manat, AZM; the amount equalled approximately 5 US dollars (USD)) for each member of his family as well as some assistance in the form of food, tents and warm clothes. He also submitted a copy of his employment record, where it was noted that, on 1 September 1993, he had been hired as a teacher at a school in Baku. In June 2016 he stated that he had not been able to work as a teacher in Baku because the school where he had found a job was located far away and he could not travel that far due to health problems.

20. In his claim for pecuniary damages, Mr Chiragov asserted that the size of the plot of land mentioned in his technical passport in reality was 6,500 sq. m, after enlargements, but that only 1,200 sq. m had been registered. Nevertheless, the value indicated in his claim concerned only the 1,200 sq. m area. In addition, he had a second plot of 10,000 sq. m, for which he claimed the estimated loss of rental income. Further to the dwelling-house and storehouse described in the technical passport, he also owned a cattle shed and a second storehouse. He requested compensation for the full value of the buildings. He also sought compensation for the full value of the household items that his family had left behind in 1992, including five handmade carpets. Mr Chiragov and his family had cultivated the land and kept bees and livestock; in 1992, they had had 70 fruit trees, 55 beehives, 3 horses, 9 cows, 80 sheep, 120 hens, 60 turkeys and 40 geese. He claimed the full value of the trees, horses and poultry as well as lost income from sales of fruit, potatoes, honey, calves, milk, lambs and wool. He also wished to be compensated for lost salary from his teaching jobs and for the family's living expenses in Baku.

21. In total, Mr Chiragov's claim for pecuniary damages for the 14-year period between April 2002 and June 2016 amounted to 1,573,180 Azerbaijani "new" manat (AZN; approximately EUR 790,000), divided into the following amounts per category: land (value and rent income) 100,000; houses (value) 260,000; household items (value) 71,480; farming and stockbreeding (sales income as well as value of fruit trees and livestock) 906,500; teacher's salary 100,800; increased living expenses 134,400.

(b) Adishirin Chiragov

22. Mr Adishirin Chiragov, born in 1947, who is married and has three children, used to work as a teacher in Chiragli. According to the application to the Court, he received the same type of government support as the first applicant, that is, a salary, a government supplement and some material assistance. In June 2016 he submitted that the total monthly amount of salary and pension was approximately AZN 700 for his whole family.

23. In his claim for pecuniary damages, Mr Chiragov alleged that the size of the plot of land mentioned in his technical passport in reality was 7,500 sq. m, after enlargements, but that only 1,200 sq. m had been registered. The value indicated in his claim concerned the full actual area. In addition, he had a second plot of 12,000 sq. m of farmland, for which he claimed the estimated loss of rental income. As described in the technical passport, he had a dwelling-house with a storage area and a separate storehouse. He stated, however, that the size of the latter was 120 sq. m, rather than 90 sq. m as indicated in the passport. He requested compensation for the full value of the buildings. He also sought compensation for the full value of the household items that his family had left behind in 1992, including six handmade carpets, and for the second-hand value of a Niva car. Mr Chiragov and his family had cultivated the land and kept bees and livestock; in 1992, they had had 90 fruit trees, 20 beehives, 9 cows, 2 oxen, 65 sheep, 150 hens, 70 turkeys and 50 geese. He sought compensation for the full value of the trees and poultry as well as lost income from sales of fruit, potatoes, honey, bees, calves, milk, lambs, wool and cheese. He also wished to be compensated for lost salary from his teaching job and for the family's expenditure for renting a flat in Baku in 1992-94.

24. In total, Mr Chiragov's claim for pecuniary damages came to AZN 926,240 (approximately EUR 465,000), divided into the following amounts per category: land (value and rent income) 213,500; houses (value) 129,000; household items (value) 45,950; car (value) 10,000; farming and stockbreeding (sales income as well as value of fruit trees and livestock) 465,390; teacher's salary 50,400; increased living expenses 12,000.

(c) Ramiz Gebrayilov

25. Mr Ramiz Gebrayilov, born in 1960, who is married and has four children, used to work as an engineer in Lachin. In the application to the Court, he stated that he was retired for health reasons and received the equivalent of USD 25 per month in pension and an additional USD 5 per month in government support for each member of his family. In submissions to the Court in June 2010, he mentioned that he had seen a video of Lachin, recorded in 2001, from which he had recognised that his house had been burnt down; according to neighbours, this had occurred a few days after he had left Lachin. In June 2016 he stated that he had continued to work and earned an income in Baku. However, he had since

retired, receiving a monthly pension of AZN 115. The family also received about AZN 600 monthly from his children's salaries and government support.

26. In his claim for pecuniary damages, Mr Gebrayilov contended that the size of the plot of land mentioned in his technical passport in reality was 5,000 sq. m, rather than 480 sq. m, as indicated in the passport. Basing himself on an estimated current square metre price of land, AZN 40, he claimed the value of the full actual area. Further to the dwelling-house and storehouse described in the technical passport, he also owned a storehouse, a cattle shed, a garage and a natural spring. He requested compensation for the full value of the buildings and the spring as well as the loss of rental income during the summers when the family used to leave Lachin and rent out the house. He also sought compensation for the full value of the household items that his family had left behind in 1992, including 16 handmade carpets. Mr Gebrayilov and his family had cultivated the land and kept livestock; in 1992, they had had 81 fruit trees, 12 cows, 8 calves, 200 sheep and 170 lambs. He sought compensation for the full value of the livestock as well as lost income from sales of fruit, vegetables, milk and other dairy products, meat and wool. He also requested that he be compensated for the full value of his "Auto Service" business, comprising 5,000 sq. m of land, a building, tools and machinery.

27. In total, Mr Gebrayilov's claim for pecuniary damages for the period between April 2002 and June 2016 amounted to AZN 1,849,555 (approximately EUR 925,000), divided into the following amounts per category: land (value) 200,000; buildings and spring (value and rent income) 222,000; household items (value) 29,455; farming and stockbreeding (sales income as well as value of livestock) 1,168,100; "Auto Service" business (value of land, facilities and machinery) 230,000.

(d) Akif Hasanof

28. Mr Akif Hasanof, who was born in 1959, used to work as a teacher in Aghbulag. In the application to the Court, he stated that he received a teacher's salary and a very small government supplement as well as some material assistance. He could hardly support himself and the five members of his family. In June 2016 he submitted that, after leaving Lachin, he had worked in various jobs with a very low income. He had not been able to find employment as a teacher or a school director in Baku.

29. In his claim for pecuniary damages, Mr Hasanof stated that the size of his land had reached 8,200 sq. m, as opposed to 1,600 sq. m registered in his technical passport. Nevertheless, he sought compensation for only the registered part of the land; as he did not know its current market value, he requested the estimated loss of rental income. Further to the dwelling-house and storehouse mentioned in the technical passport, he also owned a barn and an additional large building with a garage. He requested compensation

for the full value of the buildings as well as the loss of rental income for parts of the dwelling-house which were rented out throughout the year. He also sought compensation for the full value of the household items that his family had left behind in 1992, including 20 handmade carpets, and for the second-hand value of a Niva car. Mr Hasanof and his family had cultivated the land and kept bees and livestock; in 1992, they had had 141 fruit trees, raspberry bushes, 50 beehives, 3 horses, 16 cows, 100 sheep, 50 turkeys and 50 geese. He sought compensation for the full value of the bees, horses, cows and sheep as well as lost income from sales of fruit, vegetables, honey, bees, calves, milk, lambs, wool, cheese and goose quill. He also wished to be compensated for lost salary from his teaching job and for the family's living expenses in Baku.

30. In total, Mr Hasanof's claim for pecuniary damages for the period between April 2002 and June 2016 came to AZN 2,621,490 (approximately EUR 1,300,000), divided into the following amounts per category: land (rent income) 84,000; buildings (value and rent income) 320,000; household items (value) 91,440; car (value) 12,000; farming and stockbreeding (sales income as well as value of bees and livestock) 2,017,650; teacher's salary 50,400; increased living expenses 46,000.

(e) Fekhreiddin Pashayev

31. Mr Fekhreiddin Pashayev, born in 1956, who is married and has three children, used to work as chief engineer for the Ministry of Transport in Lachin. According to the application to the Court, he received a total of 125,000 manat (again, presumably, "old" manat) per month for his family in government support for displaced persons; in addition, his wife received a monthly pension of 170,000 manat. In 2010 he submitted a copy of his employment record where it was noted that, on 1 April 1993, he had been appointed to his previous position as chief engineer which, following the occupation of the district of Lachin, had been relocated to the ministry's winter deposit at Aghjabedi (about 300 km west of Baku). His employment there had been terminated in January 2003. In June 2016 he stated that, after leaving Lachin, he had not been able to find employment as chief engineer in Baku.

32. In his claim for pecuniary damages, Mr Pashayev sought compensation for the full value of his land, as described in the technical passport, based on an estimated current square metre price of AZN 200. He also claimed an amount for the rent that could have been collected for that plot of land during the 14-year period between April 2002 and June 2016. As described in the technical passport, he had a dwelling-house, another small house, used as a "summer house", and a small storehouse. He requested compensation for the full value of the buildings as well as the estimated rent that could have been collected for the dwelling-house. He also sought compensation for the full value of the household items that his

family had left behind in 1992, including ten handmade carpets and jewellery of a value of AZN 96,000. Mr Pashayev and his family had cultivated one hectare of land in his native village of Kamalli and kept bees and livestock; in 1992, they had had 500 fruit trees, 20 beehives and 20 cows. He sought compensation for the full value of the bees and cows as well as lost income from sales of fruit, honey, bees, calves and milk. He also wished to be compensated for lost salary from his job as chief engineer and for the family's living expenses in Baku, including the rent paid for a house during the first three years after their leaving Lachin.

33. In total, Mr Pashayev's claim for pecuniary damages amounted to AZN 2,224,090 (approximately EUR 1,100,000), divided into the following amounts per category: land (value and rent income) 107,860; buildings (value and rent income) 252,000; household items (value) 134,630; farming and stockbreeding (sales income as well as value of bees and livestock) 1,494,800; engineer's salary 201,600; increased living expenses 33,200.

(f) Qaraca/Sagatel Gabrayilov

34. Mr Qaraca Gabrayilov, born in Lachin in 1940, who was married and had five children, died on 19 June 2005. His application was pursued by his son, Mr Sagatel Gabrayilov, born in July 1970.

35. In his claim for pecuniary damages, Mr Sagatel Gabrayilov stated that the farmland in his family's possession in reality had measured 8,000 sq. m, after gradual enlargement, rather than the total of 753.6 sq. m mentioned in the technical passport and the allocation decision submitted to the Court. The value indicated in his claim concerned the full actual area. Further to the dwelling-house described in the technical passport, the family also owned a cattle shed, a storehouse and a water reservoir. He requested compensation for the full value of the buildings and the reservoir as well as the loss of rental income for parts of the dwelling-house which, due to the size of the house, could have been rented out throughout the year. He also sought compensation for the full value of the household items that his family had left behind in 1992, including 26 handmade carpets. The family had cultivated the land and kept bees and livestock; in 1992, they had had 66 fruit trees, 40 beehives, 16 cows, 150 sheep and 80 hens. Mr Gabrayilov claimed the full value of the bees and livestock as well as lost income from sales of fruit, honey, calves and lambs as well as products from the cows, sheep and hens. He also requested compensation for the lost income from the family's carpet-weaving and bread-making businesses. Finally, he wished to be compensated for the living expenses that the family would have had in Lachin. However, since they were not living there during the period in question, this amount must be deducted from the total claim.

36. Thus, in total, Mr Sagatel Gabrayilov's claim for pecuniary damages came to AZN 2,752,835 (approximately EUR 1,400,000), divided into the following amounts per category: land (value) 60,000; buildings and

reservoir (value and rent income) 452,000; household items (value) 54,475; farming and stockbreeding (sales income as well as value of bees and livestock) 2,051,960; other business activities (sales income) 134,400.

2. *The Government's submissions*

37. The Government requested the Court to reject the applicants' claims for non-pecuniary damages on the ground that they were unfounded and excessive. The Government suggested that the suffering allegedly inflicted on the applicants during the years was rather related to the military conflict and its consequences than to the issue in the present case, the denial of access to property and homes. Furthermore, there was no indication that they had suffered permanent emotional pain that had been sustained for over two decades.

38. As regards the applicants' claims for pecuniary damages, they were without merit and should also be rejected. In general, the Government maintained that damage occurring before 26 April 2002 fell outside the Court's competence *ratione temporis* and could not therefore be compensated. This applied to the destruction of or damage to houses and moveable property (including household items, cars, livestock and crops). In this regard, they referred to the Court's principal judgment in which the Court concluded that it was unclear whether the applicants' houses had been destroyed or were still partly or wholly intact and that their moveable property had likely been destroyed during the military attack in 1992 or in the following years (§ 146).

39. With respect to the houses, the Government pointed out the discrepancy between the applicants' various statements in their observations on just satisfaction, in which they had expressed, *inter alia*, that their properties had been either burnt down or badly damaged as a result of the military attack. Furthermore, in regard to both houses and moveable property, the applicants had allegedly failed to prove their existence in 2002. In the Government's view, the burden of proof was on the applicants who had to show that pecuniary damage had resulted from the violations found by submitting relevant documents demonstrating not only the existence of property but also the damage and the amount to be compensated. The applicants had failed to submit such evidence and had instead based their claims on unverified speculations. Whereas the Court had found it established by way of *prima facie* evidence that the applicants were in possession of houses and land at the time of their flight (principal judgment, § 143), it had not mentioned anything about moveable property. Also the applicants' claims regarding lost income were unsubstantiated and of a speculative nature.

40. The Government further submitted that, in addition to being unsubstantiated, the applicants' submissions were inconsistent and contradictory. Among other things, their initial statements in the case and

their submissions on just satisfaction differed from the information contained in their technical passports. Even if such discrepancies had not prevented the Court from finding a breach of the Convention in regard to access to property, the Government asserted that they were of key importance in assessing damage. Moreover, the individual amounts claimed for pecuniary damage had varied greatly during the proceedings. For instance, Mr Elkhan Chiragov, as opposed to his claim of AZN 1,573,180 presented in 2016, had claimed AZN 1,583,980 in the just-satisfaction submissions of 9 July 2012 and AZN 2,186,980 in his signed statement attached to the latter submissions. While Mr Ramiz Gebrayilov claimed AZN 1,849,555 in 2016, he had claimed AZN 931,600 in the 2012 submissions and AZN 1,130,000 in the statement attached to these submissions. The other applicants' claims showed similar inconsistencies.

41. Furthermore, by claiming compensation for the current value of their property, the applicants had implied that the violation found by the Court concerned deprivation of property. However, no such deprivation, whether constructive or regulatory, had taken place, and the applicants had retained their title to property. Instead, the violation under Article 1 of Protocol No. 1 concerned a denial of access to and loss of use of property. In such situations, the Court's approach (as laid down in, for instance, the case of *Loizidou*, cited above) was to assess the loss of the non-use of property with reference to the annual ground rent calculated as a percentage of the value of the property during the relevant period.

42. The Government also maintained that the point of departure for any calculation of damages could not be based on the current market value of the applicants' alleged property but should have regard to the prices and currency relevant at the time of their leaving the district of Lachin in 1992. The Government submitted several Soviet documents listing the official prices for houses and other buildings, household items, cars, fruit trees, livestock and agricultural products which were applicable at that time.

3. The Court's assessment

(a) Introductory remarks

43. When reserving the question of just satisfaction for a later stage in the principal judgment, the Court referred to the exceptional nature of the present case (§ 224).

44. That exceptional nature is owing to a number of features. One is that the present case relates to an ongoing conflict situation. The active military phase in the Nagorno-Karabakh conflict took place in 1992-94 but, despite a ceasefire agreement concluded in May 1994 and negotiations conducted within the framework of the OSCE Minsk Group, no peace agreement has been reached (for a more detailed description of the background and current situation, see §§ 12-31 of the principal judgment). Twenty-three years later,

breaches of the ceasefire agreement continue to occur. As both parties have pointed out in their observations on just satisfaction, violence has recently escalated along the Line of Contact, most notably during the military clashes in early April 2016.

45. Another particular aspect of the case is that, whereas the events that led the applicants to flee their property and homes occurred in May 1992, the respondent State, the Republic of Armenia, ratified the Convention ten years later, on 26 April 2002. Having thus no jurisdiction *ratione temporis* over events pre-dating 26 April 2002, the Court concluded that the applicants still had valid proprietary rights to land and houses in the district of Lachin (§ 149 of the principal judgment). From the date of entry into force of the Convention, it found Armenia responsible for continuing violations of the applicants' rights under Article 1 of Protocol No. 1 as well as Articles 8 and 13 of the Convention (§§ 201, 207-208 and 214-215).

46. The Court is thus dealing with a continuing situation which has its roots in the unresolved conflict over Nagorno-Karabakh and the surrounding territories and still affects a large number of individuals. More than one thousand individual applications lodged by persons who were displaced during the conflict are pending before the Court, slightly more than half of them being directed against Armenia and the remainder against Azerbaijan. The applicants in these cases represent just a small portion of the persons, estimated to exceed one million, who had to flee during the conflict and have since been unable to return to their properties and homes or to receive any compensation for the loss of their enjoyment.

47. In this connection, the Court considers it appropriate to emphasise once more the principle of subsidiarity. In the present case it has both a political and a legal dimension.

48. As to the political dimension, the Court has already referred to the undertakings given by Armenia and Azerbaijan prior to their accession to the Council of Europe, committing themselves to the peaceful settlement of the Nagorno-Karabakh conflict (§ 87 of the principal judgment). By now, some fifteen years have passed since the ratification of the Convention by Armenia and Azerbaijan without a political solution of the conflict being in sight. The Court can only underline that it is the responsibility of the two States involved to find a solution on a political level (see, *mutatis mutandis*, *Kovačić and Others v. Slovenia* [GC], nos. 44574/98 and 2 others, §§ 255-256, 3 October 2008; and *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 85, ECHR 2010).

49. Coming to the legal dimension, the Court reiterates that the principle of subsidiarity underpins the Convention system (*Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 134, ECHR 2014, and the cases cited therein). This principle is embodied in Article 1 of the Convention, according to which the Contracting States shall secure the rights and freedoms guaranteed by the Convention to everyone within their

jurisdiction, while, according to Article 19, it is for the Court to ensure the observance of the engagements undertaken by the States in the Convention and the Protocols thereto. Furthermore, the principle underlies the requirement for applicants to exhaust domestic remedies pursuant to Article 35 § 1 and the corresponding obligation for States under Article 13 to provide effective remedies for breaches of the Convention (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV; and *Demopoulos and Others*, cited above, § 69). The principle of subsidiarity also guides the Court's approach in dealing with systemic violations of the Convention when applying the pilot judgment procedure developed under Article 46 (see, for instance, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 143, ECHR 2014).

50. Moreover, as it has done in other cases arising out of unresolved conflict situations or in cases revealing systemic violations, the Court cannot emphasise enough that it is not a court of first instance. It does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of specific facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see, *mutatis mutandis*, *Demopoulos and Others*, cited above, § 69; and *Ališić and Others*, cited above, §§ 142-143).

51. It is precisely the Government's failure to comply with its accession commitments as well as its obligations under the Convention which obliges the Court in the present case to act as a court of first instance, establishing relevant facts some of which date back many years, evaluating evidence in respect of property claims and finally assessing monetary compensation. All this is to be seen against the background that the present application is examined as a leading case while hundreds of similar cases against Armenia are still pending before the Court.

52. Without prejudice to any compensation to be awarded as just satisfaction in the present case, the effective and constructive execution of the principal judgment calls for the creation of general measures at national level. Guidance as to appropriate measures has been given in the principal judgment, where the Court stated, *inter alia*, that, "pending a comprehensive peace agreement, it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment" (see further § 199 of the principal judgment).

(b) General principles on just satisfaction

53. The Court reiterates its case-law according to which a judgment where the Court finds a breach generally imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*Kurić and Others*, cited above, § 79). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. The discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States pursuant to Article 1 of the Convention to secure the rights and freedoms guaranteed. If the nature of the breach allows for *restitutio in integrum*, it is for the respondent State to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (*Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330 B; and *Kurić and Others*, cited above, § 80, and the cases referred to therein). In this connection, the role of the Committee of Ministers, under Article 46 § 2 of the Convention, to supervise the execution of the Court's judgments should be emphasised (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, §§ 84-88, ECHR 2009). Nevertheless, the Court is mindful of the fact that some situations – especially those involving long-standing conflicts – are not, in reality, amenable to full reparation.

54. As regards claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damages claimed by the applicant and the violation of the Convention. In appropriate cases, this may include compensation in respect of loss of earnings (*Kurić and Others*, cited above, § 81).

55. In regard to losses related to real property, where no deprivation of property has taken place but the applicant has been denied access to it and therefore the possibility to use and enjoy it, the Court's general approach is to assess the loss suffered with reference to the annual ground rent, calculated as a percentage of the market value of the property, that could have been earned on the properties during the relevant period (*Loizidou*, cited above, § 33).

56. A precise calculation of the sums necessary to make reparation in respect of the pecuniary losses suffered by the applicant may be prevented by the inherently uncertain character of the damage flowing from the violation. An award may still be made notwithstanding a large number of imponderables involved in the assessment of losses, though the greater the lapse of time involved, the more uncertain the link becomes between the

breach and the damage. The question to be decided in such cases is the level of just satisfaction in respect of pecuniary losses that it is necessary to award to the applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (*Kurić and Others*, cited above, § 82).

57. Furthermore, the Court reiterates that there is no express provision for non-pecuniary or moral damage. In *Varnava and Others v. Turkey* ([GC], nos. 16064/90 and 8 others, § 224, ECHR 2009) and *Cyprus v. Turkey* ((just satisfaction) [GC], no. 25781/94, § 56, ECHR 2014) the Court confirmed the following principles which were gradually developed in its case-law. Situations where the applicant has suffered evident trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feelings of injustice or humiliation, prolonged uncertainty, disruption to life, or real loss of opportunity can be distinguished from those situations where the public vindication of the wrong suffered by the applicant, in a judgment binding on the Contracting State, is an appropriate form of redress in itself. In some situations, where a law, procedure or practice has been found to fall short of Convention standards, this is enough to put matters right. In other situations, however, the impact of the violation may be regarded as being of a nature and degree as to have impinged so significantly on the moral well-being of the applicant as to require something further. Such elements do not lend themselves to a process of calculation or precise quantification. Nor is it the Court's role to function akin to a domestic tort mechanism court in apportioning fault and compensatory damages between civil parties. Its guiding principle is equity, which above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred. Its non-pecuniary awards serve to give recognition to the fact that moral damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage.

58. Finally, the Court observes that, depending on the circumstances of the case, it may be appropriate to make an aggregate award for pecuniary and non-pecuniary damage (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 222, ECHR 2012).

(c) Award of damages in the present case

(i) General considerations

59. In the principal judgment, the Court held that no aim had been indicated which could justify the denial of access of the applicants to their property and the lack of compensation for this interference and that, consequently, there had been and continued to be a breach of their right to property (§ 201). Furthermore, the denial of access to the applicants' homes

constituted an unjustified interference with their right to respect for their private and family lives as well as their homes (§ 207). Finally, no effective remedy had been available in respect of these breaches (§ 214). The Court considers that the applicants' return to their property and homes in the district of Lachin and compensation for the loss sustained by them during the period from 26 April 2002, when they were denied such access, would put them as far as possible in a situation equivalent to the one in which they would have found themselves had their rights under the Convention not been breached. However, the Court considers, in agreement with the applicants, that it is evident that there is no realistic possibility for them to return in the prevailing circumstances and that no such possibility has existed during the period under scrutiny (see, for example, §§ 28-31, 67, 69 and 195 of the principal judgment). Thus, an award of compensation is the appropriate just satisfaction in the present case.

60. As has already been mentioned, damage suffered by the applicants before 26 April 2002 is not directly related to the violations found by the Court and therefore cannot be compensated under Article 41. Furthermore, the applicants must provide sufficient proof that they had property which still existed at that time in order to be eligible for pecuniary damages. In the principal judgment, the Court, having regard to the particular circumstances of the case, accepted *prima facie* evidence as substantiation that they had been in possession of houses and land at the time of their flight (§ 143). In principle, the same degree of proof should be required in regard to the question of their property's continued existence and condition in April 2002.

(ii) *Pecuniary damage*

(α) Land and houses

61. In the principal judgment, the Court concluded that the applicants, at the time of their leaving Lachin, held rights to land and to houses which constituted "possessions" within the meaning of Article 1 of Protocol No. 1 and that there was no indication that those rights had been extinguished afterwards. Accordingly, they still hold rights to real property in Lachin (§ 149). As the applicants have not been deprived of their property, compensation cannot be given for the loss of land and houses as such, but only for the loss related to the applicants' inability to use and enjoy the property.

62. As regards houses, the Court has accepted that, despite discrepancies between the applicants' technical passports and their statements in the initial application, the passports constitute, together with other documents submitted, *prima facie* evidence of the applicants' title to property (principal judgment, §§ 141-143). However, in their observations on just satisfaction, all of the applicants except Mr Pashayev claimed to own various buildings

and installations that had either not been mentioned in the passports or previous submissions or were alleged to be of a different size than previously stated. Thus, as pointed out by the respondent Government, the applicants' submissions exhibit several inconsistencies.

63. The Court further stated that it was unclear whether the applicants' houses had been destroyed or were still partly or wholly intact (principal judgment, § 146). The applicants' assertions were inconsistent also in this regard: in their observations on the merits of the case, they expressed fear that their property had been destroyed or pillaged soon after their flight (§ 189); in their observations on just satisfaction in 2012 and 2016, they stated both that the properties had been burnt down or badly damaged as a result of the military attack and that their houses were still standing, although they might be derelict.

64. The applicants submitted aerial images from the Azerbaijani Ministry of Defence and from Google to show that their houses were still standing. However, in submissions to the Court in June 2010, Mr Ramiz Gebrayilov stated that he had recognised from a video recorded in 2001 that his house had been burnt down. Moreover, in the applicants' submissions on just satisfaction of 9 July 2012, it was acknowledged that the Goris-Stepanakert highway, which was apparently completed in 1999, passes through the place where Mr Gebrayilov's dwelling-house once stood. Thus, it must be concluded that his house no longer existed in April 2002. As regards the condition of the houses of the other applicants, the images supplied are far from conclusive. First, the images were taken from very far away and show buildings that are difficult to discern. Second, there is no evidence that the structures marked are actually the houses once inhabited by the applicants. Third, most of the marked structures are very badly damaged, with only rough walls or parts of a wall still remaining. The only house that appears to have an intact structure is the one allegedly belonging to Mr Akif Hasanof. However, it is impossible to discern its condition and, as already noted, whether it is actually his house.

65. The evaluation made by the "Working Group on Valuation of Loss and Casualties as a Result of Occupation of Territories of Azerbaijan Republic by Armenian Armed Forces" in June 2016, according to the document submitted by the applicants, has been made on the basis of "the presented evidence, documents and witness statements". However, the document does not give any details of the evidence examined or of the calculation method used by the Working Group. Nor is it possible to determine whether the evaluation concerns all the buildings that the applicants now claim to own or only the houses mentioned in the technical passports. It is further unclear whether the amounts mentioned for each applicant's land and house(s) represent the value in 1992, 2002 or 2016 or at another point in time. Given, moreover, that the other information submitted in the case demonstrates that one dwelling-house was no longer existent in

2002 and rather strongly suggests that most, if not all, of the other applicants' houses had been very badly damaged before that year, the Working Group's evaluation cannot be given great weight.

66. Having regard to all the imponderables mentioned, the submissions in the case do not sufficiently show that the applicants had houses which, in April 2002, still existed or, if so, existed in such a condition that they could be taken into account for the purposes of an award of compensation. Therefore, no such award can be made.

67. Coming to the applicants' plots of land, their existence has been established in the same manner as their houses, thus mainly through the technical passports submitted in the case (see paragraph 60 above). With the exception of Mr Hasanof and Mr Pashayev, the applicants' compensation claims in regard to land, like those relating to houses, contained assertions of title to large plots of land that had not been described in their passports or supported by any allocation decision or other document. These unsubstantiated claims cannot be considered, and the Court will therefore have regard only to the plots identified in their technical passports.

68. As has been established in the case of *Loizidou* (cited above, § 33; see further paragraph 55 above), the Court's general approach is to assess the loss suffered due to a denial of access to land and the resultant impossibility to use and enjoy it with reference to the possible rent income, calculated as a percentage of the market value of the land. However, in the present case, it is very difficult to determine the value of the applicants' land. For the reasons described above, no great weight can be attached to the evaluation made by the "Working Group on Valuation of Loss and Casualties as a Result of Occupation of Territories of Azerbaijan Republic by Armenian Armed Forces". No other evaluation or other data to guide an assessment of the value is available in the case. This can partly be explained by the fact that, at the time when plots were allocated to the applicants, there was no private ownership of land under the Soviet legal system, it being given to them instead with a "right of use" (for a more detailed description on the rights to land at that time, see §§ 145-148 of the principal judgment). The difficulty of establishing a value is also compounded by the fact that, at the start of the period that can be considered by the Court, the applicants' land had been located on occupied and largely ravaged territory for ten years and a further fifteen years, in similar circumstances, have passed since. These circumstances would rather justify the attribution of a very moderate value to the applicants' land.

69. Consequently, while pecuniary damages may be awarded in respect of loss of income from the applicants' land, including possible rent and proceeds from farming and stockbreeding, the Court's general approach to calculating loss, as adopted in *Loizidou*, does not appear appropriate or useful in the circumstances of the present case.

(β) Household items, fruit trees and livestock

70. The applicants claimed compensation for pecuniary damage for the loss of household items, cars, fruit trees and bushes, and livestock. No evidence, except for statements of individuals, has been submitted in support of the claims. More importantly, all of these belongings must reasonably be presumed to have been destroyed or to have vanished during the military attack on the district of Lachin or the following ten-year period until April 2002 (as to moveable property, see the Court's conclusions in the principal judgment at §§ 138 and 146). If any items were still in existence at the latter date, they would at least have sustained such damage during years of decay that they were unlikely to have been in a usable state. There is no element in the case which would give reason to draw a different conclusion. Thus, in respect of these items, there is no causal connection between the damages claimed and the continuing violations found in the principal judgment. Consequently, no award of compensation can be made under this head.

(γ) Loss of salaries and other income

71. The applicants further claimed compensation for loss of earnings previously enjoyed in Lachin, either the loss of salary that they had received as teachers or engineers or the loss of income from business activities that they had conducted. In these respects, the Court finds that there is no causal link between the violations found in the principal judgment and the damages claimed. This is so, because the losses are not related to the lack of access to the applicants' property and homes but rather to their displacement from Lachin in 1992. It is not possible to speculate as to what employment or income the applicants could have had in Lachin in 2002, ten years after their flight. Furthermore, with the exception of the business activities of Mr Ramiz Gebrayilov, the loss of income was not part of the applicants' claims until 2016. In sum, no award can be made for loss of salaries or other income.

(δ) Increased living expenses

72. Several applicants also sought reparation for increased living expenses, notably for rent of alternative accommodation. The Court would, in principle, accept that the applicants have incurred certain additional expenses in Baku. It must be emphasised again, however, that compensation therefor can only concern the period from 26 April 2002. Furthermore, no precise amounts can be established, as verifications of the applicants' living expenses, including rental agreements or invoices, have not been supplied.

(ε) Conclusion in respect of pecuniary damage

73. In conclusion, the Court considers that an award of pecuniary damages can be made only in respect of two heads, namely the loss of income from the applicants' land in Lachin and their increased living expenses in Baku. However, the assessment of the damage sustained is dependent on a large number of imponderables, partly because the claims are generally based on limited documentation and partly because no reliable method or data for evaluating the value of the land has been presented. Consequently, the pecuniary damage sustained by the applicants does not lend itself to precise calculation.

(iii) *Non-pecuniary damage*

74. Turning to the applicants' claims for non-pecuniary damages, the nature of the military attack in 1992, as invoked by the applicants (see paragraph 13 above), cannot be taken into account as it is outside the Court's jurisdiction in the case. However, the Court acknowledges that the circumstances of the case must have caused the applicants emotional suffering and distress due to the protracted and unresolved situation which has separated them from their property and homes in the district of Lachin and constrained them to a life as internally displaced persons in Baku in presumably poorer living conditions.

75. The Court considers that, in the present case, the finding of a violation does not constitute in itself sufficient just satisfaction for the non-pecuniary damage suffered. As was noted in the principal judgment, the assistance provided to hundreds of thousands of Armenian refugees and internally displaced persons does not exempt the respondent Government from its obligations towards another group, namely Azerbaijani displaced persons like the applicants. It appears that, so far, no property claims mechanism or other measures have been put in place by the Government which could benefit persons in the applicants' situation (see paragraph 52 above as well as the considerations in the principal judgment, §§ 199-200). Consequently, the case differs from the case of *Doğan and Others v. Turkey* ((just satisfaction), nos. 8803/02 and 14 others, § 61, 13 July 2006), where the Court considered that, in view of the measures taken by the authorities of the respondent State to remedy the situation of the applicants and other internally displaced persons, the principal judgment in itself constituted sufficient just satisfaction for any non-pecuniary damage arising from the violations of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1.

(iv) *Entitlement of family members to compensation*

76. The Court reiterates that family members who are entitled to pursue an application following the applicant's death may also take the applicant's

place as regards claims for just satisfaction, with regard to both pecuniary damage (see *Malhous v. the Czech Republic* [GC], no. 33071/96, §§ 67-68, 12 July 2001) and non-pecuniary damage (see, for instance, *Ječius v. Lithuania*, no. 34578/97, § 109, ECHR 2000-IX; and *Avci and Others v. Turkey*, no. 70417/01, § 56, 27 June 2006; contrast, however, with the case of *Malhous*, § 71, where the violation was not considered to have affected the successor personally). Furthermore, the Court has granted non-pecuniary damages to the son of an applicant in a case pursued by him concerning unreasonable length of pension proceedings, not only for the period when the applicant was alive but also for the period after her death when the domestic proceedings had been continued by the son as the applicant's heir (*Ernestina Zullo v. Italy* [GC], no. 64897/01, §§ 115-116 and 148-149, 29 March 2006).

77. The sixth applicant in the present case, Mr Qaraca Gabrayilov, died in June 2005, shortly after having introduced his application before the Court. The application has been pursued by his son, Mr Sagatel Gabrayilov. The question therefore arises whether the applicant's son may be awarded compensation for the full period examined in the present case. In view of the particular nature of the violations at stake, namely continuing violations of the applicant's rights under Article 1 of Protocol No. 1 and of Articles 8 and 13 of the Convention, the Court considers that it would be unduly formalistic to exclude from the award of compensation the period subsequent to the applicant's death. As has been shown above, in a case concerning the unreasonable length of proceedings, and thus a violation which has an element of continuity, the award of just satisfaction is not necessarily limited to the period before the applicant's death. The position may be different where the application is not pursued by the late applicant's next of kin but by the administrator of his estate (*Solomonides v. Turkey* (just satisfaction), no. 16161/90, §§ 42-43 and 47, 27 July 2010) or where the applicant's next of kin, who pursues the application, is not personally affected by the violation found (see *Malhous*, cited above, § 71).

78. In the case at hand, the Court notes that the Gabrayilov family lived in Lachin where they cultivated crops and bred livestock on their land. They thus formed a household economic unit. In May 1992, when the son was 21 years of age, the family fled together. Consequently, the applicant's son was in the same situation as the applicant and was personally affected by the loss of enjoyment of the property and home in Lachin and the lack of effective remedies in that regard. Moreover, in finding that there had been and continued to be breaches of the Convention rights of all six applicants, the Court included, in respect of Mr Qaraca Gabrayilov, the period subsequent to his death (principal judgment, § 201). In coming to that conclusion, it also found that all six applicants had existing rights to their plots of land (§ 192). In the absence of any indication to the contrary, the applicant's son must be considered as successor to the property rights of his

father. Having regard to all these factors, the Court finds that Mr Sagatel Gabrayilov may be awarded compensation for the full period examined in the present case.

(v) *Overall conclusion*

79. As follows from the above considerations, the applicants are entitled to compensation for certain pecuniary losses and for non-pecuniary damage. The pecuniary and non-pecuniary damage are, in the Court's view, closely connected. For the reasons set out above, the damage sustained does not lend itself to precise calculation (see paragraphs 57, 68, 72 and 73). Further difficulties in the assessment derive from the passage of time. As has been acknowledged by the Court (see paragraph 56 above), the time element makes the link between a breach of the Convention and the damage less certain. This consideration is particularly prominent in the present case where, as has already been mentioned, the period over which the Court has jurisdiction *ratione temporis* started fifteen years ago in April 2002, that is, ten years after the military attack and the applicants' flight in May 1992, which are the underlying events leading to the applicants' continuing displacement from their property and homes. An award may still be made, notwithstanding the large number of imponderables involved. For these reasons, the compensation to be awarded to the applicants must be determined at the Court's discretion, having regard to what it finds equitable.

80. In conclusion, the Court has regard to the respondent State's primary duty to make reparation for the consequences of a breach of the Convention and underlines once more the responsibility of the two States concerned to find a plausible resolution to the Nagorno-Karabakh conflict (see paragraphs 48-53 above). Pending a solution on the political level, it considers it appropriate in the present case to award the applicants aggregate sums for pecuniary and non-pecuniary damage. Making its assessment on an equitable basis, it awards each of the applicants EUR 5,000 covering all heads of damage, plus any tax that may be chargeable on that amount.

C. Costs and expenses

81. The applicants claimed reimbursement of 29,910 pounds sterling (GBP) for legal fees for 200 hours' work carried out by three of their eight lawyers in the proceedings before the Court. However, the timesheets submitted listed fees amounting to GBP 26,850 for 179 hours' work. The applicants' other five counsel had provided their advice and assistance on a pro-bono basis, for which reason no fees were claimed for their work. The applicants also sought reimbursement of GBP 1,792.87 for expenses incurred for telephone, postage, translation fees as well as photocopying and stationery.

82. The Government asserted that the costs and expenses claimed by the applicants did not in any material way relate to the violations found by the Court. Moreover, no documents had been presented which showed that the costs and expenses had been actually and necessarily incurred. Also, the amounts claimed were not reasonable. In the latter respect, the Government questioned why the same hourly rate (GBP 150) had been applied for each member of the team of counsel when some of the tasks performed by two of them had had the character of the work of an associate lawyer.

83. The Court reiterates that only legal costs and expenses that have been necessarily and actually incurred can be reimbursed under Article 41 of the Convention. In this connection, it observes that the proceedings in the present case lasted for more than ten years and involved two public hearings. The case raised complex issues of fact and law and the submissions were very voluminous. The Court therefore finds that the costs and expenses were necessarily and actually incurred. Also, noting that several counsel did not ask for remuneration for their work, the amounts, including the hourly rate applied, must be considered reasonable. However, the work itemised in the supplied timesheets only came to 179 hours, giving a total of GBP 26,850 in legal fees. The Court awards this sum together with the amount claimed for expenses, thus GBP 28,642.87 in total for costs and expenses.

D. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds*

(a) that the respondent State is to pay Messrs Elkhán Chiragov, Adishirin Chiragov, Ramiz Gebrayilov, Akif Hasanof, Fekhreiddin Pashayev and Sagatel Gabrayilov, within three months, the following amounts:

- (i) EUR 5,000 (five thousand euros) to each one of them, plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
- (ii) GBP 28,642.87 (twenty-eight thousand six hundred and forty-two pounds sterling and eighty-seven pence), plus any tax that may be chargeable to them, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 12 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Johan Callewaert
Deputy to the Registrar

Guido Raimondi
President