

Voir Note explicative
See Explanatory Note

Numéro de dossier
File-number

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

Conseil de l'Europe – *Council of Europe*
Strasbourg, France

REQUÊTE
APPLICATION

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme,
ainsi que des articles 45 et 47 du règlement de la Cour

*under Article 34 of the European Convention on Human Rights
and Rules 45 and 47 of the Rules of Court*

IMPORTANT: La présente requête est un document juridique et peut affecter vos droits et obligations.
This application is a formal legal document and may affect your rights and obligations.

I. LES PARTIES
THE PARTIES

A. LE REQUÉRANT/LA REQUÉRANTE
THE APPLICANT

1. Nom de famille 2. Prénom(s)
Surname *First name(s)*
a. Aslanyants Gevork
b. Barashyan Liliya

Sexe: *Sex*: a. Male b. Female

3. Nationalité 4. Profession
Nationality *Occupation*
a. American Truck Driver
b. American Shop Owner

5. Date et lieu de naissance
Date and place of birth
a. 24 June 1947 Baku, Azerbaijan
b. 7 September 1940 Baku, Azerbaijan

6. Domicile
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8. Nom et prénom du/de la représentant(e)¹
*Name of representative** Gwynne Skinner

9. Profession du/de la représentant(e)
Occupation of representative Clinical Professor of Law

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B. LA HAUTE PARTIE CONTRACTANTE
THE HIGH CONTRACTING PARTY

12. Azerbaijan

¹ Si le/la requérant(e) est représenté(e), joindre une procuration signée par le/la requérant(e) et son/sa représentant(e).
If the applicant appoints a representative, attach a form of authority signed by the applicant and his or her representative.

II. EXPOSÉ DES FAITS **STATEMENT OF THE FACTS**

14.

A. Background and Factual Summary

1. The territory disputes over Nagorno-Karabakh between Armenia and Azerbaijan led to nearly continuous intercommunal violence, particularly by ethnic Azeris against ethnic Armenians within Azerbaijan as early as 1987.² In 1988, there was violence against ethnic Armenians in Sumgait, Baku. After these pogroms, tensions grew between the Armenians and Azerbaijanis in Baku. Large demonstrations, which were heavily anti-Armenian, were held in the streets of Baku by a group called the Popular Front,³ an organization that formed for the most part to gain independence from the Soviet Union, but which also organized anti-Armenian activities and demonstrations. In September 1989, the Azerbaijan government officially recognized the Popular Front.⁴

2. Beginning in 1988, throughout 1989, and into 1990, discrimination, hate speech, and violence were directed against the ethnic Armenian population. Violence continued to escalate in late 1989, and by 13 January 1990, numerous, organized anti-Armenian pogroms broke out in Baku.⁵ As discussed in more detail below, and as detailed by numerous media and NGOs, hundreds of thousands of ethnic-Armenians were forced to flee their homes in Baku, and hundreds were killed by mob violence.

² Amnesty International Press Release USSR: Pogrom in Azerbaizhan, EUR 46/04/90, UA 22/90, 16 January 1990. Attached. See also Amnesty International Report: 1991. Attached.

³ Human Rights Watch, "Playing the 'Communal Card': Communal Violence and Human Rights." 1 April 1995, available at www.hrw.org/reports/1995/communal/.

⁴ A Compendium of Recent Insurgency Analyses (GI 90-10043), Central Intelligence Agency, available at www.foia.cia.gov, at p. 9.

⁵ Human Rights Watch, *supra* note 3.

3. The state-owned television and radio stations, being the main sources of information for much of the population, were typically used by the Azerbaijan government to convey its positions against the ethnic Armenians.⁶ Azeri police and soldiers took no steps to protect the ethnic Armenians from violence.⁷

4. Two of the ethnic Armenians that suffered from the 1988-1990 period of violence in Baku are the Applicants, Gevork Aslanyants and his sister Liliya Barashyan, both of whom are now U.S. citizens after fleeing Baku as refugees. The following accounts relate facts from the Applicants' affidavits.

B. The Anti-Armenian Violence in Baku and the Ethnic Cleansing

1. Gevork Aslanyants

5. Gevork Aslanyants was born in Baku, Azerbaijan on 24 June 1947. He is an Armenian by ethnicity. He grew up in Baku. His father arrived in Baku in 1920, after fleeing persecution in Turkey. His father lived there until he died in 1978. Both of Mr. Aslanyants' parents are deceased and buried in Baku. Mr. Aslanyants worked as a truck driver for a factory in Baku for over twenty-eight years.

6. As described below, Mr. Aslanyants and his family lived in Baku until they and hundreds of thousands of other ethnic Armenians were forced to flee Azerbaijan before January 1990 by the Popular Front, a political group that worked hand-in-hand with the Azerbaijan government to incite violence against ethnic Armenians so that Armenians like Mr. Aslanyants would leave the country. Mr. Aslanyants and his family were forced

⁶ Azerbaijan Foundation of Democracy Development and Human Rights Protection Report: Country Reports on Human Rights Practices – 2003, available at <http://www.foundhr.narod.ru/simple-22.html>. See also State Department Reports: 2002, 2003, 2004, 2005.

⁷ Amnesty International, *supra* note 2.

to leave all their property behind and the Azerbaijan government has never compensated them for their losses.

Family's escape to Moscow

7. In 1988, Mr. Aslanyants was at home with his family when he heard of a crowd of Azeris who had formed in the center of Baku. He heard that a woman was standing in the center screaming incitements against Armenians, such as that all Armenians were dogs and should be killed, to rile the people around her. Mr. Aslanyants then heard that the woman had started to lead the crowd into the rest of Baku and that wherever the crowd went they would search for Armenians. The crowd would ransack apartments and kill any Armenians they found. Mr. Aslanyants and his wife were terrified when they heard the crowd was close and coming towards their home. Mr. Aslanyants and his wife fled their home so quickly that they left everything exactly as it was when they received the news of the mob, including the pot of soup set on the stove.

8. Mr. Aslanyants then sent his family to Russia, where he thought they would be safe. Mr. Aslanyants decided to stay in Baku to look after their home and belongings. As tensions between Armenians and Azeris escalated, Mr. Aslanyants decided he would try to sell his home and join his family in Moscow. However, Mr. Aslanyants could not find a buyer for his home. The people Mr. Aslanyants talked with told him there would be an upcoming massacre of Armenians and that he would be forced to flee or would be killed. As a result, the people told Mr. Aslanyants, they did not want to buy his home when they could just wait and have it for free once he fled.

9. Mr. Aslanyants noticed that many of his Armenian neighbors started to flee Baku and leave their homes behind. As the apartments around his home became vacant, a few

Azeris moved into the apartments and took over anything that had been left behind from his Armenian neighbors. One day, when Mr. Aslanyants returned from work he noticed that his building was mostly occupied by Azeris. Mr. Aslanyants became scared that if he returned to his home the Azeris would come for him. As a result, Mr. Aslanyants turned away from his home and left without once entering the building to retrieve any belongings or family documents. Terrified, Mr. Aslanyants decided to drive his new car to Russia immediately and join his family in Moscow.

The incidents which caused Mr. Aslanyants to return to Baku

10. Mr. Aslanyants arrived in Moscow and was reunited with his family. Mr. Aslanyants and his wife heard that Armenians were applying for refugee status at American and Russian Embassies. When Mr. Aslanyants tried to apply, he was originally turned away. The American Embassy told him that his family would need documentation, such as passports, his marriage certificate, and his family's birth certificates, in order to apply for refugee status. However, Mr. Aslanyants had left all of the family's documents in their home in Baku and was unable to retrieve them before he fled. Mr. Aslanyants decided around this time that he would have to go back to Baku for the family's documents.

No help from the government

11. Mr. Aslanyants had a sister, Liliya Barashyan, who remained in Baku. Mr. Aslanyants asked Mrs. Barashyan to please check on his home while he and his family were in Moscow. He wanted to make sure that the apartment was safe and that their belongings were not taken. Around August 1989, Mrs. Barashyan called Mr. Aslanyants, and told him that his home had been looted. She told Mr. Aslanyants that she went to

check on the home and discovered it was being looted by a group of Azeris. She tried to stop them, but was driven off by the crowd which had help from a police officer.

12. Mr. Aslanyants told his wife the news about the damage to their home. Mrs. Aslanyants became very depressed and complained to the General Prosecution Office in Moscow, which was the chief office in the USSR. Mr. Aslanyants and his wife met with the Prosecutor, who assured them that the problem was under his control. The Prosecutor then sent a complaint to the Prosecutor's office in Baku on 12 September 1989. The Azerbaijani Ministry of Internal Affairs responded on 23 September 1989 by sending a letter back to the General Prosecution Office in Moscow. The Ministry's letter stated that the police had examined Mr. Aslanyants's home and that it was safely secured, with the metal door and window coverings undamaged. A second letter arrived from the Azerbaijani Prosecutors Office in Baku. The letter claimed that Mr. Aslanyants was in Baku and that he had removed his family's belongings from his home with the help of the Russian military.

13. When Mr. Aslanyants saw the Ministry's letters, he was sure the government was lying. First, he remembered that when his sister told him that his house was looted, she mentioned that the metal door and window coverings had been pulled off. Second, the letter stated that this event was witnessed by Mr. Aslanyants's Azeri neighbors. Mr. Aslanyants and his family were in Moscow on the date that they supposedly emptied their house with help from the Russian military. Additionally, Mr. Aslanyants did not have any Azeri neighbors, as their building was originally all Armenian. Mr. Aslanyants believed the witness signatures in the second letter were fakes or were from Azeris who took over the building when all the Armenians were forced to flee Baku.

14. Mr. Aslanyants and his wife were not satisfied with the answers they received from the government in Azerbaijan. As a result, Mrs. Aslanyants complained again. A year later, Mr. Aslanyants received the same denial from the government that their house had been damaged.

Returning to Baku

15. In December 1989, Mr. Aslanyants returned to Baku to retrieve his family's documents. Mr. Aslanyants contacted one of his Azeri friends who was a taxi driver in Baku. Under the cover of night, his friend was able to help Mr. Aslanyants go through the pogroms and return to his home in Baku.

16. Once Mr. Aslanyants returned to his home, he saw that it was already occupied by an Azeri family. Mr. Aslanyants was terrified and believed that if he went into the house he would be captured and killed. As Mr. Aslanyants approached his home to collect his belongings, his fears were confirmed when the Azeris living there threatened him with a knife, shouting "Don't take anything!"

17. Mr. Aslanyants returned to his friend's taxi and tried to stay in the taxi when they were on the streets of Baku. Mr. Aslanyants was petrified that a group of Azeris would see him and kill him. He could not speak to anyone or show his passport to anyone because he worried a group would confirm he was a Christian Armenian by pulling down his pants and then would kill him.

18. At one point, Mr. Aslanyants visited his sister, who lived in a sixth floor apartment in Baku. From her balcony, Mr. Aslanyants saw the horrors that were being inflicted on other Armenians who were discovered in Baku. He saw Armenians dragged out from their homes and killed. He saw groups of Azeris kill Armenians they found on

the streets. He saw Azeris break into Armenian houses and kill the Armenians in their homes. He saw Armenians thrown to their deaths from high-rise buildings.

Final escape from Baku

19. Finally, Mr. Aslanyants knew he had to face the potential dangers and escape from Baku. His Azeri friend used his taxi to help Mr. Aslanyants travel to the train station. When they reached the train station, Mr. Aslanyants's friend went out and bought a ticket for him. However, Mr. Aslanyants then witnessed an Azeri group burn an Armenian man in front of the station and became too scared to try to flee by train. Mr. Aslanyants's other option was to try flee by airplane. Mr. Aslanyants was scared to fly out of Baku, because he had heard that the airports were dangerous due to the high number of Azeri groups.

20. However, Mr. Aslanyants and his friend traveled through Baku and arrived at the airport. At this point, Mr. Aslanyants decided he would try to get a flight to Russia because there were no flights to Armenia. When he arrived at the airport, Mr. Aslanyants saw a policeman. He decided to bribe the policeman. Without the bribe, Mr. Aslanyants knew the policeman would tell the Azeris crowds that he was Armenian and then he would be killed. The policeman accepted the bribe and escorted Mr. Aslanyants to his flight. Mr. Aslanyants boarded his flight and returned to Russia without further incident.

21. Mr. Aslanyants and his family were eventually granted refugee status from the American Embassy. Mr. Aslanyants and his family moved to the United States and he and his wife have since become citizens of the United States.

2. Liliya Barashyan

22. Liliya Barashyan and her family are also victims of the 1990 pogroms that took place in Baku Azerbaijan. As described in detail below, these pogroms were the culmination of ethnic hatred on the part of many Azerbaijani people against the Armenians living in Baku.

23. Mrs. Barashyan was born in Baku, Azerbaijan on 7 September 1940. She is an Armenian by ethnicity. She grew up in Baku. Her father arrived in Baku in 1920, after fleeing persecution in Turkey and lived in Baku until he died in 1978. Both of Mrs. Barashyan's parents are deceased and buried in Baku. Mrs. Barashyan owned a small women's clothing shop when she lived and worked in Baku.

Eruption of violence against Armenians

24. Mrs. Barashyan first became aware of the rise of anti-Armenian sentiments when she and her husband traveled to Sumgait on a business trip in 1988. While in Sumgait, Mrs. Barashyan felt there were tensions within the city and overall felt the city was very unfriendly. On the way home, Mrs. Barashyan saw that large stones littered the road going to Sumgait. After Mrs. Barashyan arrived back in Baku, news of violence in Sumgait spread as survivors arrived over the next few days. Mrs. Barashyan remembered that she heard about the horrors that were inflicted upon Armenians in Sumgait, including women who were raped and attacked just for being Armenian. Mrs. Barashyan also remembers her husband telling her that he saw a pregnant Armenian woman who had been cut open and left to die on the streets.

25. Mrs. Barashyan waited for the police to do something, but the government did nothing to stem the violence towards Armenians. The newspapers, radio stations, and television stations did not report about the violence and what was being done to

Armenians. Instead, Muslim Azeri demonstrators took to the streets of Baku, marching towards the capital shouting that Armenians should die. If the demonstrators caught anyone, Armenian or another minority nationality, they would beat the person with stones.

26. When the government in Moscow found out about the violence in Baku, the Soviet military troops were deployed in order to protect Armenian citizens. However, the soldiers were not allowed to take action to protect Armenians. Instead, Mrs. Barashyan saw the soldiers stand idly by while Armenians were attacked in front of them. As a result, the violence against Armenians escalated over the next two years.

Assaults on Mrs. Barashyan's and her family

27. In 1988, one of Mrs. Barashyan's brothers was killed during the violence against Armenians. He was struck in the head with an ax by an Azeri. Mrs. Barashyan's brother's wife was also killed around this time. Additionally, an Azeri mob attacked Mrs. Barashyan's husband while he was on the train and almost threw him out of the train. He came home that day covered in blood.

28. In 1989, Mrs. Barashyan's son, Marsell, who suffered from schizophrenia, was beaten by eleven people. Because he was tall, he was able to run away from the Azeri crowd to the train station. Marsell then disappeared and was lost to his family for several years.

29. Additionally in 1989, another of Mrs. Barashyan's brothers, Gevork Aslanyants, fled Baku. Mrs. Barashyan would occasionally go and check on the apartment he was forced to leave behind when he fled. Around August 1989, a friend of Mr. Aslanyants called Mrs. Barashyan and requested that she check again on her brother's home. The

friend told her that Mr. Aslanyants's apartment had been broken into, the metal bars pulled off the windows, and that Azeris were stealing Mr. Aslanyants's belongings. Mrs. Barashyan's neighbor drove her down to her brother's home. Once Mrs. Barashyan arrived, she saw a crowd of 500-700 Azeris had gathered in the area. The crowd, armed with knives, sticks, and skewers, quickly surrounded her. Mrs. Barashyan talked to an Azeri policeman on the scene, hoping to receive help and protection, but the policeman refused to help her. The crowd of Azeris told Mrs. Barashyan that if she tried to take anything they would cut open her belly. A man in the crowd then hit her in the back with a 2 x 4 board, causing a permanent back injury that Mrs. Barashyan still suffers from today.

Fleeing Azerbaijan

30. Rather than do anything to squelch the violence, an official government post was issued on 3 October 1989 stating that if any Armenian wanted to flee the country there would be a military convoy that would escort a car caravan out of Azerbaijan and into Russia. Mrs. Barashyan was scared by the violence, so she, her husband, and other family members decided to join the caravan and flee Baku.

31. When Mrs. Barashyan and her family members arrived, they discovered the caravan consisted of about 400-500 vehicles. On the premise that they were there to keep the caravan safe, Russian soldiers were placed at the front, middle, and back of the caravan. Mrs. Barashyan remembers that all of the soldiers had guns, AK-47s, for protection.

32. The caravan made it to the Northern edge of Azerbaijan, in Khachmas, without incident. However, as they left Khachmas, the caravan was ambushed by a group of Azeri demonstrators armed with stones and other object that could be used as weapons.

Mrs. Barashyan's car was attacked and she and her husband ended up covered in glass from the broken windows. Mrs. Barashyan's aunt's mother-in-law, who was also in the car with her and two children, was struck with a flying rock. The children and the mother-in-law all ended up covered in blood, although they managed to survive. Mrs. Barashyan's brother in-law was also injured after being struck by broken glass.

33. During the attack, the caravan still kept moving. If a driver of a vehicle was injured or killed, another passenger would move over and keep the vehicle moving. The drivers also kept accelerating until the caravan crossed the Russian border. No one stopped for food or aid until the caravan was safely inside Russian territory.

34. Throughout the attack, the governmental escort did nothing to protect the Armenians in the caravan. The soldiers would not fire their guns at the Azeri crowd, which lead Mrs. Barashyan to believe the guns were only for show and not really intended to protect the Armenians.

The incidents that caused Mrs. Barashyan to return to Baku

35. Once in Russia, Mrs. Barashyan and her family discovered that they were essentially homeless. She and her family did not have a place to live and did not have anyone to stay with in Russia. Additionally, Mrs. Barashyan and her husband left all of their belongings in Baku when they fled. As a result, Mrs. Barashyan and her husband decided to return to Baku, rationalizing that the violence could not go on forever and that they needed to recover the rest of their belongings from their home in Baku.

36. Mrs. Barashyan and her husband were able to catch a flight back to Baku and on or around 15 January 1990, they returned to their home in Baku. When they arrived at their home, Mrs. Barashyan and her husband discovered that their subdivision manager

had taken over their home. The manager knew that because Mrs. Barashyan was Armenian, she would not be able to sell or trade her home to another person because no one would pay or trade anything of value for an Armenian's house. The manager then told Mrs. Barashyan and her husband that if they wanted to leave alive that they would leave right away and take nothing with them.

37. Mrs. Barashyan and her husband at this point decided to take a taxi to her sister's house. Mrs. Barashyan's sister was married to a Russian who worked for the Azerbaijani government and thus was able to receive protection from the violence. Additionally, Mrs. Barashyan thought it would be safe because her sister lived in a government subdivision on the eleventh floor of a tall high-rise building, which she thought would be protected. In order to reach her sister's house, Mrs. Barashyan and her husband had to travel through the center of Baku. On the trip, Mrs. Barashyan saw Armenians being tossed from the buildings all around the city. This was at the height of the pogroms in January. At one point, the taxi could not go any further because the streets were blocked with thousands of Azeris who had taken to the street. Mrs. Barashyan decided to try to reach her sister's house by foot and proceeded to walk the rest of the way to the apartment.

38. Mrs. Barashyan and her husband finally reached her sister's home. Once there, Mrs. Barashyan discovered that her sister's husband was not at home. Mrs. Barashyan and her sister decided they wanted to see what was happening outside and approached her sister's balcony. Mrs. Barashyan's husband warned them to get away from the balcony, because if they were seen, Azeris might come and attack them because people knew Mrs. Barashyan's sister was Armenian. However, Mrs. Barashyan and her sister could not help themselves and ended up watching the violence that was occurring outside.

39. The first thing Mrs. Barashyan saw was a neighboring Armenian family across the street being targeted by a mob of Azeris when they attempted to flee their home. In the street below, the family had a truck filled with their belongings. The mob started the truck on fire and started throwing the family's belongings and furniture onto the fire. Above in their seventh-floor apartment home, the Azeris took first the husband and then the wife and threw them down into the flaming truck. Next, Mrs. Barashyan saw that the Azeris seized another of her sister's Armenian neighbors. Mrs. Barashyan recognized the woman as one of her friends. The Azeris threw the woman from her eleventh floor apartment onto the street below. Once the woman's body hit the ground, other Azeris on the street picked up anything they could find and beat the body. An ambulance arrived at that point and Mrs. Barashyan watched as a paramedic got out and yelled at the mob, "Are you crazy? She is dead; do you want her to die again?"

Final escape from Baku

40. When Mrs. Barashyan's sister's husband returned he hired a personal escort, consisting of KGB, to take Mrs. Barashyan, her husband, and a housekeeper to the airport so they could flee Baku. On the way to the airport, Mrs. Barashyan remembers looking outside the car and seeing the whole city on fire. Several times Azeri crowds approached Mrs. Barashyan's car, believing the people inside were Armenians. The escort told the Azeris that the people inside were only tourists and deterred any further violence or inquiry. Each time this occurred, Mrs. Barashyan would laugh hysterically to hide her fear. Mrs. Barashyan and her family believe that because Mrs. Barashyan did not look like the typical Armenian as she had blond hair and was very fair instead of being olive-

skinned with dark hair, the Azeri crowds that saw her would not believe that she was Armenian.

41. Once Mrs. Barashyan reached the airport, she saw more violence against Armenians. The luggage section of the airport was on fire, and any Armenians caught trying to escape were beaten, raped and killed by the Azeri crowds. Mrs. Barashyan's car was escorted to the government section of the airport. There Mrs. Barashyan quickly discovered that there were no flights leaving for Armenia. The only flights available were to Moscow. At this point Mrs. Barashyan and her husband didn't care about the destination, they only wanted to flee Baku and escape with their lives. Mrs. Barashyan and her husband were able to get on a flight leaving for Moscow and arrived in Moscow.

Arrival in Moscow

42. When Mrs. Barashyan and her husband arrived in Moscow, they did not know where to go or where to stay. Everything was very expensive and Mrs. Barashyan did not have very much money. She and her family ended up staying at a refugee house. When Mrs. Barashyan and her family entered the house, they had their names recorded in a journal. Mrs. Barashyan saw people sleeping everywhere, even on the floors and on the stairs. Outside the house, there were journalists constantly waiting to interview Armenians to discover what had occurred in Baku.

43. Mrs. Barashyan heard that the American embassy was allowing people to file for asylum. She and her family decided to file for asylum with her brother, Mr. Aslanyants, and his family. When she arrived at the embassy, Mrs. Barashyan saw there was a long line outside the embassy, which consisted of other Armenian refugees, including some who were living homeless on the streets of Moscow. Additionally, there were journalists

trying to interview the Armenians waiting in line. Many refugees would not talk with the journalists because the Russian militia guarded the refugees waiting in line. However, Mrs. Barashyan agreed to give an interview to one journalist. When asked why she was leaving the USSR to go to the United States, Mrs. Barashyan said, “Now I have no city, no life and no country because my government did not protect me, my family’s house, or my belongings.”

44. After the first asylum interview with the American Embassy, Mrs. Barashyan and her family went to Armenia where her sister gave them room and board. Mrs. Barashyan recalls that her sister’s one bedroom apartment was packed with family members, with the total occupants numbering fifteen. Everyone there was waiting for the American Embassy to grant them asylum.

45. In the spring of 1990, while Mrs. Barashyan was on her way home to her sister’s house in Armenia, the KGB detained her for questioning. The KGB interrogated Mrs. Barashyan for three hours regarding the interview she gave in Moscow. Mrs. Barashyan believed that the KGB finally allowed her to leave because they discovered her brother was a retired KGB colonel.

46. Finally, in 1990, Mrs. Barashyan and her family received entry visas to the United States. They arrived on 11 July 1991 in New York. On 12 July, they traveled to Oklahoma.

C. The Aftermath

47. On 20 January 1990, 12,000 Soviet troops entered Baku to “ostensibly...protect the lives of Armenians” who had been the subject of the violent pogroms.⁸ However,

⁸ Human Rights Watch Report: Human Rights Developments: Soviet Union, p. 19, available at www.hrw.org/reports/1990/WR90/HELSINKI.BOU-03.htm.

while Amnesty International reported that there were sufficient Soviet troops in Baku to stop the racial violence,⁹ these troops took no action.

48. Following the mass killings of Armenians in Baku in January 1990, Amnesty International expressed its concern that the Azerbaijan government condoned the killings.¹⁰ For example, it noted that local police took no steps to protect its citizens from the degrading treatment they suffered.¹¹ Amnesty International also noted that despite its urging to the Azerbaijan government to immediately conduct an impartial investigation, there is no clear evidence that such an investigation was ever conducted.¹²

49. Azerbaijani deputies persistently tried to characterize the events of Baku “as accidental and spontaneous actions of hooligan elements.”¹³ However, Soviet Interior Minister Vadim Bakatin has pointed out that “it isn’t possible that the ASSR rulers, and, particularly, the relevant bodies, didn’t know that a provocation fault was previously organized at the specially organized demonstrations. That time 5,000 participants in the demonstration were spread all over the town with a list of the addresses of Armenian houses in their hands.”¹⁴

50. The only apparent action taken by either government in the wake of the violence was documented by Amnesty International, which states that the USSR did reportedly arrest hundreds of Popular Front supporters, charging them with “inciting racial hatred” and “organizing mass disorders.”¹⁵ However, this report also states that most of those

⁹ *Id.*

¹⁰ Amnesty International, *supra* note 2.

¹¹ *Id.*

¹² *Id.*

¹³ Burke, Justin, “Prominent Armenian writer recalls 1990 “slaughters” in Azerbaijan,” 20 January 2000, available at <http://www.eurasianet.org/resource/armenia/hypermail/20001/0018.html>.

¹⁴ *Id.*

¹⁵ Amnesty International, *supra* note 2.

arrested appeared to have been released.¹⁶ Furthermore, no record of their arrests can be found.

D. Continuing Discrimination

51. Widespread negative sentiment and discrimination against Armenians continue to be present in today's Azerbaijan society.¹⁷ For example, ethnic Armenians in Azerbaijan continue to complain of discrimination in employment, schooling, housing, the provision of social services, and many other areas.¹⁸

52. In 1997, Doctors for Human Rights, a human rights organization, reported that Azerbaijan authorities participated in institutionalized hostage-taking and torture of ethnic Armenian children and adults between 1990 and 1996.¹⁹ The organization also reported that there is testimonial evidence that Azerbaijan authorities murdered imprisoned ethnic Armenians.²⁰

53. In 2003, the European Commission against Racism and Intolerance (ECRI) reported that in order to avoid discrimination, Armenians living in Azerbaijan "tend to shield their ethnic identity or, in any event, avoid exposing it publicly."²¹

54. The ECRI also reported that "public institutions have contributed to fuel sentiments of animosity *vis-à-vis* Armenians."²² The ECRI noted that "[i]n general hate-

¹⁶ *Id.*

¹⁷ Report on Azerbaijan adopted on 28 June 2002 and made public on 15 April 2003, European Commission against Racism and Intolerance, Council of Europe, available at www.coe.int/ecri, § 48.

¹⁸ Country Reports on Human Rights Practices, *U.S. Department of Justice* 2005, available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61637.htm>. See also ECRI Report on Azerbaijan, *supra* note 19, § 53.

¹⁹ Doctors for Human Rights Report: Nagorno Karabakh and Armenia 1997, available at <http://www.doctorsforhumanrights.org/index.php?php=true&content=showitem&table=rep>.

²⁰ *Id.*

²¹ ECRI Report on Azerbaijan, *supra* note 17, § 51.

²² *Id.* at § 52.

speech and derogatory public statements against Armenians take place routinely. In fact, the mere attribution of Armenian ethnic origin to an ethnic Azerbaijani may be perceived as an insult, as illustrated by trials for slander and insult opened by public figures against persons who had publicly and falsely alleged their Armenian ancestry.”²³

55. While Azerbaijan has established some new Criminal Code provisions that are set up to prohibit racism, they have been seldom consulted. Azerbaijani authorities use the relative low number of cases under these codes “as indicating that racism and racial, national, ethnic or religious discrimination do not exist in Azerbaijan.”²⁴ However, ECRI believes that “discrimination in daily life is overlooked by both the legislation and society at large.”²⁵

56. ECRI noted that “discrimination can sometimes be present in the way in which legal provisions are applied in practice.”²⁶ This, along with stereotyping and prejudice, has resulted in members of the minority groups, such as Armenians, to probably “not actively seek access to or full enjoyment of, certain rights.”²⁷ The ECRI reports that “[j]udicial proceedings opened by Armenians trying to protect their property have reportedly not led to the restoration of their rights.”²⁸

57. Moreover, the ECRI reports that “[t]here is no Armenian national cultural association, no school providing education in the Armenian language and none of the Armenian Orthodox churches are functioning. The Azerbaijani authorities have stated their readiness to support any requests on the part of the Armenian population to establish

²³ *Id.*

²⁴ *Id.* at § 47.

²⁵ *Id.*

²⁶ *Id.* at § 48.

²⁷ *Id.*

²⁸ *Id.* at § 53.

such associations and schools or to resume the use of the churches, but stress that no requests in the sense have been made. ECRI considers that such lack of initiative on the part of the Armenian population is a sign of the negative climate prevailing in Azerbaijani society vis-à-vis Armenians.”²⁹

Armenian Cemeteries Being Destroyed

58. The International Council on Monuments and Sites (ICOMOS) reported the destruction of an Armenian cemetery in Djulfa in November 1998.³⁰ After some protests from UNESCO, the destruction was temporarily halted.³¹ Many others also protested, including the Armenian foreign minister, Vartan Oskanian; the Armenian National Committee; and members of the U.S. House of Representatives.³² However, by November 2002, the destruction of the cemetery resumed.³³ In 2006, the European Parliament issued a resolution condemning the events at Djulfa.³⁴

59. Research on Armenian Architecture (RAA) described the destruction, stating that in December 2005, about 200 soldiers of the Azerbaijani army used heavy hammers and pickaxes to reduce the displaced headstones to a heap of crushed pieces.³⁵ Over a period of 3 days beginning on 14 December 2005, local witnesses who watched the devastation from across the river in Iran described the destruction of the last remains: “a large group of Azeri soldiers destroyed the remaining grave markers with sledgehammers, loaded the

²⁹ *Id.* at § 51.

³⁰ “Destruction of the Armenian Cemetery at Djulfa,” International Council on Monuments and Sites, 2002-2003, available at <http://www.international.icomos.org/risk/2002/azerbaijan2002.htm>.

³¹ *Id.*

³² Pickman, Sarah, “Tragedy on the Araxes,” Archaeological Institute of America, 30 June 2006, available at <http://www.archaeology.org/online/features/djulfa/index.html>.

³³ International Council on Monuments and Sites, *supra* note 30.

³⁴ European Parliament, 19 January 2006, Resolution, P6_TA(2006)0028; *See also* Pickman, Sarah, *supra* note 32.

³⁵ “Jugha the Annihilation of the Armenian Cemetery by Nakhijevan’s Azerbaijani Authorities between 1998 and 2006,” available at http://www.raa.am/Articles/Juga_buklet_E.htm.

broken stones onto trucks, and dumped them into the waters of the Araxes.”³⁶ Among the witnesses were representatives from the Armenian Apostolic Church Diocesan Council in the Iranian city of Tabriz and an Armenian film crew, who captured a significant amount of the event on camera.³⁷

60. In addition, the destruction could not have been carried out without the support of the Azerbaijan government. For example, “[t]he transportation (of the excavated tombstone from the cemetery) by the State Railway is clear evidence of the planned action by the Government of Azerbaijan.”³⁸ Further, because the Armenian cemetery in Djulfa is located near the border with Iran, the Azerbaijani forces patrol the area heavily, so that it is unlikely that the destruction of the Djulfa cemetery could have occurred without the Azerbaijan government’s knowledge.³⁹

61. Despite strong evidence to the contrary, on 9 January 2006, Azerbaijan’s Ambassador to the United States, H. Pashayev, denied allegations of any government activities of destroying Armenian cemeteries in Azerbaijan.⁴⁰ In a letter to U.S. Congressmen Joe Knollenberg and Frank Pallone, Jr., Pashayev wrote that “Azerbaijan’s Ministry of Defense officially confirmed that its personnel have never engaged in any activity even remotely related to what you claim in your letter.”⁴¹ The activity referred to in the congressmen’s letter was video footage of a number of men destroying medium-sized gravestones in Djulfa, Nakhichevan.⁴²

³⁶ Pickman, Sarah, *supra* note 32.

³⁷ *Id.*

³⁸ International Council on Monuments and Sites, *supra* note 32, citing RAA report.

³⁹ Pickman, Sarah, *supra* note 32.

⁴⁰ H. Pashayev’s letter, 9 January 2006, available at www.azembassy.com/news/pages.php?name=jan09,2006.

⁴¹ *Id.*

⁴² *Id.*

62. In April 2006, 10 European Union Members of Parliament (MEPs) traveled to Djulfa to investigate the eyewitness accounts of the destruction of the cemetery.⁴³ However, the Azerbaijani government denied the 10 MEPs access to the cemetery, insisting that it would only allow access if the MEPs also visited alleged sites of Armenian destruction of Azeri cultural heritage.⁴⁴

E. Applicants' Life Displaced, Property Lost

1. Mr. Aslanyants

63. Mr. Aslanyants can no longer visit either of his parents' graves, which are located in Baku, because Azeris and Armenians are still enemies in Baku. Many of the belongings that Mr. Aslanyants left behind were priceless heirlooms that were central to his sense of his family history. Mr. Aslanyants had a comfortable life in Baku, where he lived in his own home with his family and held the same job for 28 years. He now lives in a government subsidized apartment in Plano, Texas.

Property Loss

64. Before the Popular Front and the Azerbaijan government began to expel Armenians, Mr. Aslanyants and his family lived modestly, but had many valuable possessions. Mr. Aslanyants inherited an apartment home from his father. The apartment, located at Akhundova Street #13, Baku, was taken from Mr. Aslanyants after he fled and may have since been destroyed. The apartment was worth 20,000 RUB at the time Mr. Aslanyants fled Baku.

65. Mr. Aslanyants's apartment contained a Zimmerman German Piano, unique Romanian furniture, a crystal chandelier, his father's antique silver lion relic from World

⁴³ Pickman, Sarah, *supra* note 32.

⁴⁴ *Id.*

War II, and a television. These items were worth 10,000 RUB at the time Mr. Aslanyants fled Baku.

66. When he fled Baku, Mr. Aslanyants left behind two cars, a “Zhiguli” and his father’s 1953 model Moskvich.

67. Mr. Aslanyants also lost his pension that he earned through 28 years of work as a truck driver when he fled Baku.

2. Mrs. Barashyan

68. Because she cannot return to Baku, Mrs. Barashyan has also been robbed of any opportunity to visit her parents’ graves, which are located there. Mrs. Barashyan and her husband both had secure employment and a peaceful life in Baku. Mrs. Barashyan owned a tailoring shop and her husband worked as a train conductor. Most significantly, Mrs. Barashyan has been denied recognition of the suffering that she endured. She wants nothing more than justice and the moral equilibrium that would result if the world condemned the Azerbaijan government for the violence it perpetrated against innocent Armenians.

Property Loss

69. Mrs. Barashyan lost her custom home, which was valued at 180,000-200,000 RUB at the time she fled Baku. She also lost a balance of 10,000 RUB in her bank account, 15,000 RUB in 1,000 ruble bonds, and 50,000 RUB in bank notes. Mrs. Barashyan was unable to recover her pension, which would have consisted of 120 RUB per month every month after she reached the age of fifty five just five years after she fled Baku.

F. Status of the Bank in Azerbaijan

70. On 12 March 1922, the Federative Union of the Transcaucasus Soviet Socialist Republics (TSSR), which included Azerbaijan, was established.⁴⁵ The TSSR moved to a single monetary system and thus terminated banking activity of the former State Bank of Azerbaijan.⁴⁶ On 30 December 1922, TSSR was included in the Union of the Soviet Socialist Republics.⁴⁷ Incorporation into the USSR meant that the State Bank of the USSR would have control over all banking activities in Azerbaijan.

71. During this time, the State Bank of the USSR established its Baku Branch. After the adoption of the Constitution and until the end of 1991, the Azerbaijan Department of the National Bank of the USSR exclusively carried out banking activities in Azerbaijan.

72. Early in 1991 and prior to state independence, the National Bank of the Azerbaijan Republic (National Bank) was formed and took control over the banking activities of the Azerbaijan Department of the National Bank of the USSR. Under the Act on Basis of Economic Independence of Azerbaijan Republic, the status and authority of the National Bank was recognized.⁴⁸ According to the National Bank, it was declared “a supreme emission agency which carries out state policy” during this period.⁴⁹ Moreover, the National Bank was granted the authority to issue credit, provide money turnover, issue settlements, regulate other activity of banking system as a whole, and fulfill its duty as a reserve bank.

73. In February 1992, the government of the Azerbaijan Republic formally established the National Bank of the Azerbaijan Republic as the State Bank. All prior

⁴⁵ The TSSR included Azerbaijan, Georgia, and Armenia. National Bank of Azerbaijan, *About the Bank: History*, available online at www.nba.az/?mod=inside&id=456&lang=en&sub1=463.

⁴⁶ The Decree of the Board of Union of the TSSR, 10 January 1923.

⁴⁷ National Bank of Azerbaijan, *supra* note 45.

⁴⁸ “Act on Basis of Economic Independence of Azerbaijan Republic, 25 May 1991,” which was called “Banking system and money turnover,” included these issues as a whole.

⁴⁹ National Bank of Azerbaijan, *supra* note 45.

banks merged into the National Bank of the Azerbaijan Republic. The National Bank of Azerbaijan has the exclusive rights to issue banknotes and to function as a reserve system. Moreover, the Bank has the exclusive authority to promulgate regulations.

74. The first Constitution of independent Azerbaijan Republic, which was adopted in a referendum, held on 12 November 1995. The 1995 Constitution reinforces the fact that the Bank is under the exclusive ownership of state.⁵⁰

III. EXPOSÉ DE LA OU DES VIOLATION(S) DE LA CONVENTION ET/OU DES PROTOCOLES ALLÉGUÉE(S), AINSI QUE DES ARGUMENTS À L'APPUI
STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR PROTOCOLS AND OF RELEVANT ARGUMENTS

15.

75. Article 34 of the Convention states: “The Court may receive applications from any...group of individuals claiming to be a victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or one of the protocols.”

76. During the January 1990 Baku pogroms against ethnic Armenians, Azerbaijani authorities’ failure to protect Applicants, failure to investigate the pogroms, Azerbaijan’s failure to return property to Applicants, as well as the ongoing injuries continuing from that event, constitute violations under the Convention.

Summary of Specific Articles and Protocol Violated

77. Applicants submit they have suffered violations of the following rights:
- a. **Article 3**, due to Azerbaijani authorities’ lack of investigation into the acts of ethnic cleansing and Applicants’ forced displacement and failure to hold those accountable responsible, for which both countries have a

⁵⁰ See Article 19 (Paragraph II) of the Azerbaijan Constitution.

continuing legal duty, leaves Applicants subjected to continuous anguish and feelings of inferiority that amount to degrading treatment;

- b. **Article 1 of Protocol No. 1**, due to Applicants having been illegally deprived of their possessions as well as the peaceful enjoyment of these possessions, and Azerbaijan's continuing failure to return or ensure the return of Applicants' property or compensate them for their loss;
- c. **Article 8**, due to Azerbaijan's policy or practice of condoning racism which continues to create a barrier for Applicants return to their homes and homeland;
- d. **Article 14**, in conjunction with Article 8 and Article 3, Applicants have been the victims of discriminatory treatment that continues to deserve vigorous investigation under the Convention.

Jurisdiction

78. When the forced displacement of Applicants occurred in 1990 and 1989, Azerbaijan SSR and the Soviet Union each had degrees of political control in Baku. The Applicants submit that Azerbaijan has obligations that were created in or arose out of the events of 1990.

79. In addition, although Azerbaijan ratified and/or enacted the Convention after the events in 1990, the allegations contained herein refer to violations of the Convention that have continued beyond such dates of enactment.

A. Jurisdiction Ratione Loci

80. Article 1 of the Convention establishes a State's *ratione loci* jurisdiction: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention." 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.⁵¹

81. Applicants submit that all violations of their rights arise within the control and jurisdiction of Azerbaijan.

82. In 1920, the Soviet Red Army invaded the Azerbaijan Democratic Republic. Eventually Azerbaijan became a constituent republic of the USSR as the Azerbaijan SSR. Even though politics were highly centralized in Moscow, Azerbaijan SSR had its own communist party and controlled many aspects at the local level. The Court has noted that when one State occupies another, each State "has a duty to take all the appropriate measures which it is still within its power to take" in order to fulfil their obligations.⁵² It is not necessary to determine the detailed control that Azerbaijan had under this framework.⁵³

B. Ratione Temporis

1. Continuing Violations

83. Azerbaijan enacted the Convention and Protocol No. 1 on 15 April 2002, yet the violations are either continuing in nature, or are currently occurring, thus fall within the Court's *ratione temporis* jurisdiction.⁵⁴

⁵¹ *Ilascu and Others v. Moldova and Russia*, judgment of 8 July 2004, § 311.

⁵² *Ilascu*, at § 313.

⁵³ *Id.*, at § 315.

⁵⁴ See *Ilascu*, *supra* note 51, p. 50, at § 397; see also *Dubinskaya v. Russia*, judgment of 13 July 2006 § 28; *Broniowski v. Poland* (dec.) [GC], no. 31443/96, §§ 74-77, ECHR 2002-X.

84. Namely, under Article 3 the access to the information in uncovering what occurred and who was responsible for the violence in January 1990 and the events leading up to that week, lies within the control of Azerbaijan. Its failure to conduct an investigation, and continuing to fail to do so, is a continuing violation.

85. Under Article 1 of Protocol No. 1, Azerbaijan failed to protect the Applicants' rights to their property and the peaceful enjoyment of this property. It is the continuing obligation and within Azerbaijan's control to return such property to Applicants, or to compensate them for their losses. The fact that Applicants property has not been returned to them is a continuing violation. The fact they cannot return to their homelands to enjoy their property is a current violation.

86. Under Article 8, Azerbaijan has done little if anything to combat the racial hatred that ignited the violence of 1990, and is thus maintaining a constant barrier preventing Applicants from returning to their homeland to live freely there and enjoy their homes and property. This is a continuing and current violation.

87. Under Article 14, Azerbaijan is responsible for allowing, if not aiding in creating, the hostile discriminatory environment that existed at the time Applicants fled for their lives, and which continues to exist today. If the Applicants are to ever return the place where they have spent the majority of their lives, Azerbaijan must act to alleviate this hostile discriminatory environment. This is both a continuing and current violation.

Alleged Violation of Article 3 – Prohibition of Torture, Inhuman and Degrading Treatment

88. The Applicants submit that the continuing procedural failure of competent Azerbaijani authorities to carry out a prompt and impartial investigation in itself constitutes an ongoing violation of Article 3.

89. Article 3 of the Convention states: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The absolute prohibition enshrined in Article 3 is one of the Convention’s most fundamental values and as such has no limitations or exceptions.⁵⁵ Even in the most difficult circumstances, as in the event of a public emergency threatening the life of the nation, the Convention prohibits in absolute terms torture and inhuman or degrading treatment.⁵⁶

90. The Court has confirmed there is an Article 3 obligation on States to carry out an effective official investigation into an allegation of serious ill-treatment.⁵⁷ Such a positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by State agents.⁵⁸ An investigation should be capable of leading to the identification and punishment of those responsible.⁵⁹ If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice, and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.⁶⁰

91. The only apparent action taken by either Azerbaijan or the Soviet Union in the wake of the violence was documented by Amnesty International, which states that the USSR did reportedly arrest hundreds of Popular Front supporters, charging them with “inciting racial hatred” and “organizing mass disorders.”⁶¹ However, this report also

⁵⁵ *Ilascu*, *supra* note 51, at § 424.

⁵⁶ *Id.*

⁵⁷ *Asenov and Others v. Bulgaria*, judgment of 28 October 1998, § 102.

⁵⁸ *M.C. v. Bulgaria*, judgment of 4 December 2003, § 151.

⁵⁹ *Asenov*, *supra* note 57, at § 102.

⁶⁰ *Asenov*, *supra* note 57, at § 102.

⁶¹ Amnesty Report, *supra* note 2, at 234.

states that most of those arrested appeared to have been released. Furthermore, no record of their arrests can be found.⁶²

92. The investigation of the violent removal of a whole minority race from Azerbaijan continues to be non-existent. Applicants submit that the only way to gain a complete historical and legal account of the incidents around their forced displacement is for the Azerbaijani authorities to carry out a complete investigation.

Alleged Violation of Article 1 of Protocol No. 1 – Protection of Property

93. Applicants submit that they were deprived of their possessions and continue to be deprived of the peaceful enjoyment of their possessions, and Azerbaijan has not returned their property or compensated Applicants for their loss.

94. Article 1 of Protocol No. 1 of the Convention states: “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.” Article 1 of Protocol No. 1 in substance guarantees the right of property.⁶³

95. Article 1 of Protocol No. 1 comprises three distinct rules. Rule number 1 enunciates the principle of the peaceful enjoyment of property. Rule number 2 covers deprivation of possessions. Rule number 3 recognizes that the Contracting States are entitled to control the use of property in accordance with the certain public interests.⁶⁴ Applicants submit that their rights under both rule number 1 and rule number 2 have been violated.

⁶² Amnesty Report, *supra* note 2, at 234.

⁶³ *James and Others v. the United Kingdom*, judgment of 21 February 1986, § 37.

⁶⁴ *Id.*

A. Peaceful enjoyment and deprivation of property

96. Applicants submit that the continuing refusal to permit the return of the displaced persons to Baku not only prevents them from having access to their property there, but also prevents them from using and enjoying it. This is a continuing violation of the right to peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1.

97. In *Cyprus v. Turkey*, there was found to be a continuing violation of Article 1 of Protocol No. 1 due to the denial to Greek-Cypriot property owners of their access to and control, use and enjoyment of their property, as well as the absence of any compensation.⁶⁵ Similarly, in this case there was not a formal and unlawful expropriation of the property of the displaced persons; instead, because Applicants cannot return to Baku there is a continuing denial of access to their property, in which they have lost all control over and possibilities to enjoy their land.⁶⁶

98. Mr. Aslanyants and Mrs. Barashyan had to leave everything behind, including their homes, bank accounts, valuables, and their respective pensions.⁶⁷ This total loss must be seen as amounting to loss of all control of their property.

99. In 1988, Mr. Aslanyants was forced to flee and to give up possession of his family's 20,000 RUB flat at Akhundova Street # 13, Baku, Azerbaijan.⁶⁸ Included in the flat were many family possessions financially worth upwards of 70,000 RUB, including some possessions which were priceless heirlooms.⁶⁹ Around 3 October 1989, Mrs.

⁶⁵ Leach, Philip, *Taking a Case to the European Court of Human Rights*. New York, Oxford University Press, 2005, at 363, *citing Cyprus v. Turkey*.

⁶⁶ *Cyprus v. Turkey*, judgment of 10 May 2001, § 185.

⁶⁷ Mr. Aslanyants Affidavit, § 6, 10, 11, 18-25; and Mrs. Barashyan Affidavit § 13, 14, 25-29

⁶⁸ Mr. Aslanyants Affidavit, § 19, 6.

⁶⁹ Mr. Aslanyants Affidavit, § 19-25.

Barashyan was forced to flee and to give up possession of her family's 200,000 RUB flat.⁷⁰

100. Mrs. Barashyan was deprived of her bank account. She was unable to recover any of the 10,000 RUB in her bank account.⁷¹ She had approximately 15,000 RUB in bonds and 50,000 in bank notes.⁷² In 1990, Mrs. Barashyan's bank account was under the control of the Azerbaijan Department of the National Bank of the USSR, which continues in form today as the National Bank of the Azerbaijan Republic.⁷³

101. The ethnic hatred directed towards Applicants compelled them to flee their properties, against their will. The Applicants tried to sell their homes but were unable to do so because of ethnic hatred.⁷⁴ According to Mr. Aslanyants, "[n]o one would buy my home because they said they could just take it once I fled because of the upcoming massacre."⁷⁵

102. There is a positive obligation on the State to protect the enjoyment of possessions that are included in Article 1 of Protocol No. 1, including obligations to prevent private interferences.⁷⁶ The racist policy and practice of Azerbaijan, as outlined above under Article 8, creates a barrier that blocks Applicants from their property.

103. Even if the Applicants were able to return home, it appears their efforts to enforce their property rights would be futile. Indeed to this day ethnic Armenians living in Baku still are unable to assert their property rights. The ECRI reports that "[j]udicial proceedings opened by Armenians trying to protect their property have reportedly not led

⁷⁰ Mrs. Barashyan Affidavit, § 27, 9.

⁷¹ Mrs. Barashyan Affidavit, § 28.

⁷² *Id.*

⁷³ National Bank of Azerbaijan, *supra* note 45.

⁷⁴ Mr. Aslanyants Affidavit, § 6; Mrs. Barashyan Affidavit, § 13.

⁷⁵ Mr. Aslanyants Affidavit, § 6.

⁷⁶ D.J. Harris, M. O'Boyle and C. Warbrick, *Law of the European Convention on Human Rights*. (London Butterworths, 1995) at 520.

to the restoration of their rights.”⁷⁷ Applicants submit that their rights to their property must be recognized.

B. Failure to compensate

104. Azerbaijan is in continuing violation of Article 1 of Protocol 1 for failing to compensate Applicants for the property they have been deprived of.

105. In *Garrett v. Portugal*, Portugal maintained that the Court had no jurisdiction *ratione temporis* to examine the applicants' complaints of expropriations because they had taken place in 1975, before the ratification of the Convention and Protocol No. 1 by Portugal on 9 November 1978. Referring to the case-law of the Convention institutions, the Government submitted that the deprivation of property was an instantaneous act and did not produce a continuing lack of a right. The applicants contested that argument and contended that there was a continuing deprivation of property until the compensation that was due had been paid. The Court noted that the deprivation of property was indisputably an instantaneous act, but went on to find that the failure to pay the applicants final compensation could be looked at by the Court.⁷⁸

106. There has been no compensation of Applicants' losses. Applicants submit that their rights under Article 1 of Protocol No. 1 are continuously violated because “no compensation has been paid...in respect of the interferences which they have suffered and continue to suffer in respect of their property rights.”⁷⁹

107. In another similar case, *Broniowski v. Poland*, there was a violation of Article 1 of Protocol No. 1 as a result of the failure of the Polish authorities to compensate the applicant for land which his family had to abandon after the Second World War. The

⁷⁷ ECRI Report on Azerbaijan, *supra* note 17, § 53.

⁷⁸ *Garrett v. Portugal*, judgment of 11 January 2000, § 41-43.

⁷⁹ *Cyprus*, *supra* note 68, at § 187.

Court found that the Government failed to provide a satisfactory explanation for continuously failing, over many years, to implement the applicant's legal entitlement to compensation.⁸⁰

108. There was a similar result in *Cyprus v. Turkey*, discussed above.

109. Applicants' Article 1 of Protocol No. 1 are continue to be in violation with out fair compensation for their loss of property.

Alleged Violation of Article 8 – The Right to Respect for Private and Family Life and Home

110. The Applicants submit that Azerbaijan's policy or practice of condoning racism continues to create a barrier for their return to their homes and homeland, which constitutes an ongoing violation of the respect of their private and family life and home.

111. Article 8 of the Convention in its pertinent section states: "Everyone has the right to respect for his private and family life, his home and his correspondence." The positive obligations inherent in Article 8(1) require the State to protect persons against the activities of other private individuals which prevent the effective enjoyment of their rights.⁸¹ This obligation stems from the Article's language, "to respect for." While the choice of the means to secure compliance with Article 8 is left to the discretion of the State, effective deterrence against grave acts requires efficient criminal-law provisions.⁸²

A. Official policy or practice that does not allow the return of Applicants.

112. In *Cyprus v. Turkey*, the Court found a continuing violation of Article 8 for the refusal of the Turkish Government to allow the return of any displaced Greek-Cypriot to

⁸⁰ Leach, *supra* note 67, at 359, citing *Broniowski v. Poland*.

⁸¹ Harris, *supra* note 78, at 302.

⁸² *M.C.*, *supra* note 58, at § 150.

their homes in northern Cyprus.⁸³ The Court found that this physical exclusion of Greek-Cypriot persons for the territory of northern Cyprus was enforced as a matter of policy or practice.⁸⁴ Similarly here, the Applicants submit that racism toward ethnic Armenians is a policy or practice of the Azerbaijan, which creates a barrier that does not allow their return home.

113. ECRI states that “there is widespread negative sentiment towards Armenians in Azerbaijan society today.”⁸⁵ “The Armenians today living on the territory of Azerbaijan...tend to shield their ethnic identity or, in any event, avoid exposing it publicly.”⁸⁶ The report went on to find that “[i]n general hate-speech and derogatory public statements against Armenians take place routinely. In fact, the mere attribution of Armenian ethnic origin to an ethnic Azerbaijani may be perceived as an insult, as illustrated by trials for slander and insult opened by public figures against persons who had publicly and falsely alleged their Armenian ancestry.”⁸⁷

114. While Azerbaijan has established some new Criminal Code provisions that are set up to prohibit racism, they have been seldom consulted. Azerbaijani authorities use the relative low number of cases under these codes “as indicating that racism and racial, national, ethnic or religious discrimination do not exist in Azerbaijan.” However, the ECRI believes that “discrimination in daily life is overlooked by both the legislation and society at large.”⁸⁸

⁸³ Gomien, Donna, Short guide to the European Convention on Human Rights. (Strasbourg, Council of Europe, 2005) at 92, *citing Cyprus v. Turkey*.

⁸⁴ *Cyprus*, *supra* note 68, at § 185.

⁸⁵ ECRI Report on Azerbaijan, *supra* note 17, at § 51.

⁸⁶ *Id.*

⁸⁷ *Id.* at § 52.

⁸⁸ *Id.* at § 47.

115. Mrs. Barashyan also describes the discrimination against ethnic Armenians in Azerbaijan that continues. “I heard that even professionals who try to have their accreditations transferred from Azerbaijani universities see their requests denied.”⁸⁹ A recent United States Department of Justice report states that ethnic Armenians have complained of discrimination in employment, schooling, housing, the provision of social services, and many other areas.⁹⁰ In yet another report from Doctors for Humans Rights, it was stated that Azerbaijan authorities participated in institutionalized hostage-taking and torture of ethnic Armenian children and adults.⁹¹

B. Destruction of Culture

116. It was also held in *Cyprus* that there was a deliberate destruction and manipulation of the human, cultural and natural environment and conditions of life in northern Cyprus.⁹² The same can be said for failure to respect Applicants’ culture.

117. The ECRI reports that “[t]here is no Armenian national cultural association, no school providing education in the Armenian language and none of the Armenian Orthodox churches are functioning. The Azerbaijani authorities have stated their readiness to support any requests on the part of the Armenian population to establish such associations and schools or to resume the use of the churches, but stress that no requests in the sense have been made. ECRI considers that such lack of initiative on the part of the Armenian population is a sin of the negative climate prevailing in Azerbaijani society vis-à-vis Armenians.”⁹³

⁸⁹ Mrs. Barashyan Affidavit, § 30.

⁹⁰ U.S. Department of Justice, *supra* note 18.

⁹¹ Doctors for Human Rights Report, *supra* note 19.

⁹² *Cyprus*, *supra* note 68, at § 167.

⁹³ ECRI Report on Azerbaijan, *supra* note 17, at § 51.

118. Aggravating the inability of Applicants to visit their sites, are reports that Armenian gravesites have been destroyed in Azerbaijan.⁹⁴
119. Applicants both experienced loss because they cannot visit the churches and gravesites that they have been forced to leave behind.
120. Thus, Applicant's rights under Article 8 are being violated, both because of Azerbaijan's failure to end the discrimination and ethnic violence against ethnic Armenians that displayed itself in the 1990 pogroms and thus is both a continuing and current violation.

Alleged Violation of Article 14 – Prohibition of Discrimination

121. Applicants submit that under Article 14, Azerbaijan is in continuous violation for the discrimination of the minority Applicants that has been created and sustained in the continuing violations of Article 8 and Article 3.⁹⁵
122. Article 14 of the Convention states: "The enjoyment of the rights and freedoms set forth in this 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."
123. Applicants submit that the ethnic cleansing violence that was allowed to occur was discrimination in violation of Article 14.
124. Discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations.⁹⁶ There are no reasonable

⁹⁴ See International Council on Monuments and Sites, *supra* note 32.

⁹⁵ Article 14 protects against discrimination in securing the rights and freedoms guaranteed by the ECHR. This means that the Article is not a freestanding right and must be invoked in conjunction with another substantive Convention right.

⁹⁶ *Nachova and Others v. Bulgaria*, judgment of 6 July 2005, § 145.

justifications for the horrific acts that took place in Baku in 1990, for the failure to investigate or hold perpetrators accountable, or for the treatment they are receiving today.

A. Azerbaijan is in Continuing Violation of Article 14 in Conjunction with Article 8.

125. Azerbaijan is responsible for allowing, if not aiding in creating, the hostile discriminatory environment that existed at the time Applicants fled for their lives, and which continues to exist today. If the Applicants are to ever return the place where they have spent the majority of their lives, Azerbaijan must act to alleviate this hostile discriminatory environment.

126. In *Nachova and Others v. Bulgaria*, the Court noted that “[r]acial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction.”⁹⁷ It is for this reason that the authorities must use all available means to combat racism and racist violence.⁹⁸

127. All the evidence shows that the violent movement against Applicants and their fellow ethnic Armenians was for the sole purpose of removing this group from Azerbaijan. The Azerbaijan police failed to respond to numerous pleas from Applicants for help. Moreover the hostile environment of racism directed at ethnic Armenians that continues to exist in Azerbaijan is discriminatory and continuously blocks the Applicants return home.

B. Azerbaijan in Continuing Violation of Article 14 in Conjunction with Article 3.

128. Applicants submit that the complete failure to investigate into the racial motivated and degrading treatment against minority ethnic Armenians continues to cause violations of discrimination.

⁹⁷ *Id.*

⁹⁸ *Id.*

129. In *Nachova*, the Court endorsed the Chamber’s statements that: “Where there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigor and impartiality, having regard to the need to reassert continuously society’s condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.”⁹⁹ When investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events.¹⁰⁰

130. Failing to do so—and treating racially-induced violence and brutality on an equal footing with cases that have no racist overtones—would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.¹⁰¹ The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.¹⁰²

131. As noted above the investigation into the violent cleansing of a minority race from Baku has to this day not been investigated. Because no investigation has been conducted, there is nothing to be evaluated on a reasonableness standard.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

IV. EXPOSÉ RELATIF AUX PRESCRIPTIONS DE L'ARTICLE 35 § 1 DE LA CONVENTION
STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

16. Décision interne définitive (date et nature de la décision, organe – judiciaire ou autre – l'ayant rendue)
Final decision (date, court or authority and nature of decision)

17. Autres décisions (énumérées dans l'ordre chronologique en indiquant, pour chaque décision, sa date, sa nature et l'organe – judiciaire ou autre – l'ayant rendue)
Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)

18. Dispos(i)ez-vous d'un recours que vous n'avez pas exercé? Si oui, lequel et pour quel motif n'a-t-il pas été exercé?
Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.

A. Explanation for Non-Pursuit of Remedies

132. Article 35 of the Convention requires that an applicant exhaust domestic remedies before applying to the Court.¹⁰³ However, “the rule of exhaustion is neither absolute nor capable of being applied automatically,”¹⁰⁴ and “it must be applied with some degree of flexibility and without excessive formalism.”¹⁰⁵ In *Aksoy v. Turkey*,¹⁰⁶ the Court found that “there is no obligation to have recourse to remedies which are inadequate or ineffective” and “the existence of the remedies in question must be sufficiently certain not only in theory but in practice.”¹⁰⁷

133. According to the “generally recognized rules of international law,” there may be special circumstances which absolve the applicant from the obligation to exhaust the

¹⁰³ Section 1 of Article 35 of the Convention: “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.”

¹⁰⁴ *Akdivar and Others v. Turkey*, 16 September 1996. See also *Ayder and Others v. Turkey*, 8 January 2004.

¹⁰⁵ *Id.*

¹⁰⁶ *Aksoy v. Turkey*, 18 December 1996. See also *Akdivar*, *supra* note 110. See also *Andronicou and Constantinou v. Cyprus*, 9 October 1997. See also *Assanidze v. Georgia*, 8 April 2004.

¹⁰⁷ *Id.*

domestic remedies at his disposal.¹⁰⁸ The Court must take into account the particular circumstances of each applicant.¹⁰⁹

134. Applicants submit that there are special circumstances present which render pursuing a claim inadequate and ineffective in Azerbaijan.

1. Special Circumstances in Azerbaijan

135. Special circumstances exist in this case which absolves the Applicants from exhausting domestic remedy because the respondent Government (1) participated in the ethnic persecutions of the Armenians; (2) failed to offer assistance and protection to the Armenians; (3) failed to investigate any wrongdoing; (4) allows discrimination against ethnic Armenians to continue today; (5) denies any participation in today's continued discrimination; and (6) does not have an independent and impartial judicial system.

136. First and foremost, Mr. Aslanyants complained to the General Prosecution Office in Moscow, which was the chief office in the USSR. The Prosecutor then sent a complaint to the Prosecutor's office in Baku on 12 September 1989. The Azerbaijani Ministry of Internal Affairs responded on 23 September 1989 by sending a letter back to the General Prosecution Office in Moscow. The Ministry's letter stated that the police had examined Mr. Aslanyants's home and that it was safely secured, with the metal door and window coverings undamaged. A second letter arrived from the Azerbaijani Prosecutors Office in Baku. The letter claimed that Mr. Aslanyants was in Baku and that he had removed his family's belongings from his home with the help of the Russian military.

¹⁰⁸ *Aksoy*, *supra* note 112. See also *Akdivar*, *supra* note 110. See also *Ayder and Others v. Turkey*, 8 January 2004.

¹⁰⁹ *Akdivar*, *supra* note 110. See *Ayder*, *supra* note 114.

137. When Mr. Aslanyants saw the Ministry's letters, he was sure the government was lying. First, he remembered that when his sister told him that his house was looted, she mentioned that the metal door and window coverings had been pulled off. Second, the letter stated that this event was witnessed by Mr. Aslanyants's Azeri neighbors. Mr. Aslanyants and his family were in Moscow on the date that they supposedly emptied their house with help from the Russian military. Additionally, Mr. Aslanyants did not have any Azeri neighbors, as their building was originally all Armenian. Mr. Aslanyants believed the witness signatures in the second letter were fakes or were from Azeris who took over the building when all the Armenians were forced to flee Baku.

138. Mr. Aslanyants and his wife were not satisfied with the answers they received from the government in Azerbaijan. As a result, Mrs. Aslanyants complained again. A year later, Mr. Aslanyants received the same denial from the government that their house had been damaged.

a. Respondent Government's Participation

139. Additionally, the Applicants' domestic remedies are futile because the respondent Government itself participated in the persecutions of Armenians. In *Akdivar v. Turkey*, the applicants maintained that any domestic remedies were illusory, inadequate and ineffective because the destruction of their homes was part of a State-inspired policy, and this policy was tolerated and condoned.¹¹⁰ This Court agreed, stating that special circumstances exist "where an administrative practice consisting of a repetition of acts incompatible with the convention and official tolerance by the state authorities has been shown to exist and is of such a nature as to make proceedings futile or ineffective."¹¹¹

¹¹⁰ *Akdivar*, *supra* note 110.

¹¹¹ *Id.*

Similarly, in this case, the respondent Government engaged in administrative practices that were incompatible with the Convention—that is, the persecution of ethnic Armenians. For example, although many of the incidents surrounding the persecution of Armenians in Baku were directly attributed to a group known as the Popular Front, there is substantial evidence that the government supported the Popular Front’s actions in inciting violence against the Armenians and thus compounded even more the violence against Armenians.

140. The state-owned television and radio stations, being the main sources of information for much of the population, were typically used by the Azerbaijan government to convey its positions.¹¹² In addition to the broadcast media, the only printing press in Baku was state-owned and controlled.¹¹³ However, no state-controlled media outlet released any information of the ethnic violence taking place against Armenians.¹¹⁴ These facts point squarely at government involvement in the ethnic hatred.

141. Furthermore, the respondent government supported anti-Armenian sentiment through the police. In some instances, Armenians were beaten in front of policemen who did not interfere.¹¹⁵ In other cases, police refused to help Armenians when asked for protection from mob attacks.¹¹⁶

b. No Help from the Respondent Government

142. Azeri police and Soviet soldiers took no steps to protect ethnic Armenians.¹¹⁷

When Armenians called for protection from the police and soldiers, no one came to

¹¹² Azerbaijan Foundation of Democracy Development and Human Rights Protection Report, *supra* note 6.

¹¹³ U.S. State Department Human Rights Report: 1999 (Azerbaijan government has near monopoly of publishing facilities).

¹¹⁴ Mrs. Barashyan Affidavit, § 6.

¹¹⁵ Mrs. Barashyan Affidavit, § 7.

¹¹⁶ Mrs. Barashyan Affidavit, § 17.

¹¹⁷ Amnesty International, *supra* note 2.

help.¹¹⁸ Mrs. Barashyan saw the chaos on the streets of Baku, with mobs hunting down every single Armenian they saw on the streets.¹¹⁹ Yet, the police stayed off the streets and allowed the crimes against Armenians to occur.¹²⁰ The refusal of the police to intervene is evidence of a government that not just condoned the persecution of Armenians, but also participated in meeting its objectives.

143. Given that the respondent Government failed to protect the Armenians, the Applicants' domestic remedies are futile. In *Akdivar v. Turkey*, which concerned the burning of houses by security forces in southeast Turkey, this Court held that special circumstances exist where national authorities fail to offer assistance and remain totally passive in the face of serious allegations of misconduct or the infliction of harm by state agents.¹²¹ In the present case, when active persecution against ethnic Armenians in Azerbaijan began in 1988, the respondent Government was totally passive and did nothing to protect the Armenians.

c. No Investigation Conducted by Respondent Government

144. Moreover, the respondent Government failed to investigate the pogroms and killings. In examining whether special circumstances exist that would absolve the Applicants from pursuing domestic remedies and to establish futility, this Court placed "particular significance to the absence of any meaningful investigation by the authorities into the applicants' allegations."¹²² This Court further noted that the "prospects of success of civil proceedings based on allegations against the security forces must be considered to

¹¹⁸ Mrs. Barashyan Affidavit, § 7, 17.

¹¹⁹ Mrs. Barashyan Affidavit, § 16.

¹²⁰ *Id.*

¹²¹ *Akdivar*, *supra* note 110.

¹²² *Id.*

be negligible in the absence of any official inquiry into the [applicants'] allegations.”¹²³

Accordingly, because the respondent Government in *Akdivar* failed to investigate, this Court found that the applicants were absolved from exhausting domestic remedies.

Similarly, in this instant case, the Azerbaijan government failed to investigate and therefore the Applicants' exhaustion of domestic remedies is futile.

145. To this day, there is no record of the Azerbaijan government investigating the persecutions of ethnic Armenians, and there is no record of the Azerbaijan government prosecuting those responsible. The Azerbaijan government simply watched and tolerated the violence committed against ethnic Armenians, and continues to watch continued discrimination against ethnic Armenians today.

146. Following the mass killings of Armenians in Baku in January 1990, Amnesty International expressed its concern that the Azerbaijan government condoned the Armenian killings, and despite its urging to the respondent government to immediately conduct an impartial investigation, there is no clear evidence that such an investigation was ever conducted.¹²⁴

147. The Respondent Government made no investigation to find and prosecute the people who killed, injured, or threatened ethnic Armenians in Baku. Azerbaijani deputies persistently tried to characterize the events of Baku “as accidental and spontaneous actions of hooligan elements.”¹²⁵ However, Soviet Interior Minister Vadim Bakatin has pointed out that “it isn't possible that the ASSR rulers, and, particularly, the relevant bodies, didn't know that a provocation fault was previously organized at the specially organized demonstrations. That time 5,000 participants in the demonstration were spread

¹²³ *Id.*

¹²⁴ Amnesty International, *supra* note 2.

¹²⁵ Burke, Justin, *supra* note 13.

all over the town with a list of the addresses of Armenian houses in their hands.”¹²⁶

Because no investigation was conducted, no one has been punished.¹²⁷

d. Discrimination Continues

148. In absolving Applicants from exhausting domestic remedies, the Court must take “realistic account not only of the existence of formal remedies in legal system of the contracting party concerned but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicant.”¹²⁸

Ethnic Tension in General

149. The ECRI reported in 2002 and 2003 that discrimination against Armenians continue to be present in today’s Azerbaijan society.¹²⁹

150. Further, Armenians in Azerbaijan “tend to shield their ethnic identity or, in any event, avoid exposing it publicly.”¹³⁰ For instance, Armenians in Azerbaijan conceal their true ethnicity to avoid discrimination by changing the ethnic description on their passports.¹³¹ Witnesses also indicate that the situation for Armenians in Baku is still too dangerous.¹³²

151. In addition, ECRI reported that “[t]here is no Armenian national cultural association, no school providing education in the Armenian language and none of the Armenian Orthodox churches are functioning.”¹³³ The Armenian community’s lack of initiative in lobbying the Azerbaijan Government to support and promote the Armenian

¹²⁶ *Id.*

¹²⁷ See Burke, Justin, *supra* note 13.

¹²⁸ *Akdivar, supra* note 110. See *Ayder, supra* note 114.

¹²⁹ ECRI Report on Azerbaijan, *supra* note 17, at § 48.

¹³⁰ *Id.*, at § 51.

¹³¹ U.S. Department of Justice, *supra* note 18.

¹³² Mrs. Barashyan Affidavit, § 30; Mr. Aslanyants Affidavit § 27, 28.

¹³³ ECRI Report on Azerbaijan, *supra* note 17, at § 51.

culture “is a sign of the negative climate prevailing in Azerbaijani society vis-à-vis Armenians.”¹³⁴

152. In *Akdivar v. Turkey*, the Court found that “the difficulties in securing probative evidence for the purposes of domestic legal proceedings, inherent in such a troubled situation, may make the pursuit of judicial remedies futile.”¹³⁵ Accordingly, in the instant case, the incident is evidence of how domestic remedies for the Applicants would be futile because not only do the Applicants have difficulty in obtaining basic information from local lawyers, but it also shows how difficult it would be for the Applicants to obtain local lawyers to represent them if they were to file a claim in the local courts.

Government Participation

153. In this case, it would be unreasonable to expect the respondent Government to properly and fairly address the Applicants’ complaints given that discrimination against Armenians in Azerbaijan continue today, particularly when taking into account that the respondent Government participates in the continued persecutions.

154. ECRI reported that “public institutions have contributed to fuel sentiments of animosity vis-à-vis Armenians,” with “hate-speech and derogatory public statements against Armenians” being routinely made.¹³⁶

155. In addition, Doctors for Human Rights reported that Azerbaijan authorities participated in institutionalized hostage-taking and torture of ethnic Armenian children and adults between 1990 and 1996.¹³⁷ The organization also reported that there is

¹³⁴ *Id.*

¹³⁵ *Akdivar*, *supra* note 110.

¹³⁶ ECRI Report on Azerbaijan, *supra* note 17, at § 52.

¹³⁷ Doctors for Human Rights Report, *supra* note 19.

testimonial evidence that Azerbaijan authorities murdered imprisoned ethnic Armenians.¹³⁸

156. Ethnic Armenians in Azerbaijan have also complained of discrimination in employment, the exercise of their property rights, schooling, housing, the provision of social services, and many other areas.¹³⁹ The Azerbaijani government has advised Armenians not to return and will give no guarantees of their safety if they chooses to return.¹⁴⁰ While the Azerbaijani government purports to maintain diplomatic relations with Armenians but continues to kill Armenians at the border.¹⁴¹

157. Perhaps most disturbing, Armenians are discriminated against because of their racial ethnicity in the local judicial system. For instance, ECRI reported that “judicial proceedings opened by Armenians trying to protect their property have reportedly not led to the restoration of their rights.”¹⁴² “Discrimination can sometimes be present in the way in which legal provisions are applied in practice.”¹⁴³ This, along with stereotyping and prejudice, has resulted in members of the minority groups, such as Armenians, to probably “not actively seek access to or full enjoyment of, certain rights.”¹⁴⁴

e. Respondent Government denies any wrongdoing in today’s discrimination

158. The Applicants’ domestic remedies are also futile because respondent Government has denied any participation in today’s discrimination against Armenians. In *Ilaşcu and Others v. Moldova and Russia*, this Court found that because the Russian

¹³⁸ *Id.*

¹³⁹ See ECRI Report on Azerbaijan, *supra* note 17, at § 53. See also U.S. Department of Justice, *supra* note 18.

¹⁴⁰ Mr. Aslanyants Affidavit, § 28.

¹⁴¹ *Id.*

¹⁴² ECRI Report on Azerbaijan, *supra* note 17, at § 53.

¹⁴³ *Id.*, at § 48.

¹⁴⁴ *Id.*

government had denied all the allegations that its armed forces, or other officials, had taken part in the Applicant's arrest, imprisonment or conviction, it would be contradictory to expect the Applicants to have approached the Russian authorities.¹⁴⁵ Similarly, in this case, the respondent Government has denied its participation in current discrimination against Armenians. For example, despite eyewitnesses, the respondent Government has refused to acknowledge that it was responsible for the destruction of an Armenian cemetery in Azerbaijan.¹⁴⁶ Even assuming that the respondent Government was not involved in the destruction of the Armenian cemetery, the respondent Government, similar to its past inaction during the pogroms, allowed the desecration to happen. Because the Armenian cemetery in Djulfa is located near the border with Iran, the respondent Government's forces patrol the area heavily, so that it is unlikely that the destruction of the Djulfa cemetery could have occurred without the respondent Government's knowledge.¹⁴⁷

f. Local Judicial System Lacks Independence and Impartiality

159. The Applicants' domestic remedies are futile because Azerbaijan's judicial system in practice is politically oriented and not independent, and it overlooks human rights issues. Focus must be directed on actual practice and not just on the laws as they are written.

160. Although the Azerbaijan Constitution provides for an independent judiciary, in practice, judges do not function independently of the Executive Branch.¹⁴⁸ The Azerbaijan

¹⁴⁵ *Ilascu*, *supra* note 51.

¹⁴⁶ See H. Pashayev's letter, *supra* note 40, See also Pickman, Sarah, *supra* note 32. See also International Council on Monuments and Sites, *supra* note 30.

¹⁴⁷ Pickman, Sarah, *supra* note 32.

¹⁴⁸ See "Azerbaijan: Fair Trial Concerns in Cases Associated with the 2005 Parliamentary Elections," Amnesty International, 25 May 2006, available at <http://web.amnesty.org/library/print/ENGEUR550022006>. See also U.S. Department of Justice 2005,

judiciary system is corrupt and inefficient.¹⁴⁹ For example, there are credible allegations that judges routinely accept bribes.¹⁵⁰ ECRI reported that “[i]t is not infrequent that, in order to benefit from a service or to avoid adverse treatment in a specific situation,” one must either be closely linked to a government employee or pay a bribe.¹⁵¹ Also, one-third of the complaints that Transparency Azerbaijan, a human rights group, receives are about corruption in the courts and the difficulties with the implementation of court rulings.¹⁵²

161. Furthermore, there are credible reports that judges and prosecutors have taken instruction from the presidential administration and the Ministry of Justice, particularly in cases in which international observers were interested.¹⁵³ Even though Article 127 of the Azerbaijan Constitution and Article 97 of the laws on courts and judges provide that judges cannot be dismissed before the expiration of their terms, in practice, judges are not immune to political manipulation.¹⁵⁴ For example, Shukur Mammedli, a judge of the Ismailli region court, was released from his position by a presidential instruction and decree signed, without any legal basis, by the Chairman of the Supreme Court.¹⁵⁵ In July 1993, President Aliyev ousted the Supreme Court chief justice because of alleged political loyalties to the opposition.¹⁵⁶

supra note 18. See also Country Reports on Human Rights Practices, *U.S. Department of Justice 2004*, available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41670.htm>.

¹⁴⁹ *U.S. Department of Justice 2005*, *supra* note 18. See also *U.S. Department of Justice 2004*, *supra* note 164.

¹⁵⁰ *Id.*

¹⁵¹ ECRI Report on Azerbaijan, *supra* note 17, at § 48.

¹⁵² Ismayilov, Rovshan, *Civil Society: Observers: European Court Ruling on Azerbaijani Torture Case Could Prompt Change*, 24 January 2007, available at www.eurasia.net.org/departments/insight.articles/eav012407a_pr.shtml.

¹⁵³ *U.S. Department of Justice 2005*, *supra* note 18. See also, *U.S. Department of Justice 2004*, *supra* note 164.

¹⁵⁴ Safaraliva, Rena, *Transparency Azerbaijan: Overview of the Judiciary System in Azerbaijan 2003-2004*, available at <http://www.transparency-az.org/files/klim0.pdf>.

¹⁵⁵ *Id.*

¹⁵⁶ Available at <http://www.nationalencyclopedia.com/Asia-and-Oceania/Azerbaijan-JUDICIAL-SYSTEM.html>; available at <http://www.travel-images.com/az-gove.html>.

162. In addition to susceptibility to political influence, there are serious doubts as to the courts' ability to be impartial. Amnesty International noted that "the Azerbaijan government may be pursuing aims of discrediting and removing political opposition rather than criminal justice."¹⁵⁷ The Azerbaijan Foundation of Democracy Development and Human Rights Protection, a human rights organization, reported that the emphasis in the courts is on obtaining convictions and not on ensuring fairness and impartiality.¹⁵⁸ Although the Azerbaijan Constitution prohibits the use of illegally obtained evidence, judges have not dismissed cases on the basis of defendants' confessions having been obtained through torture or abuse.¹⁵⁹ Judges require only a minimal level of proof to convict a defendant, especially in serious cases.¹⁶⁰ Prosecutors and judges work in close collaboration. Judges frequently have sent cases back to the prosecutor for "additional investigation" when there was not enough evidence to convict a defendant—in effect, giving the prosecution a "second chance" for conviction.¹⁶¹ This practice was confirmed in *Mammadov (Jalaloglu) v. Azerbaijan*, wherein the Court stated that "domestic courts, which reviewed the result of the criminal investigation, simply endorsed the investigator's opinion that the Applicant's claim was unsubstantiated without attempting to independently assess the facts of the case and, in essence, committed exactly the same flaws and omissions as those committed by the investigator during the criminal investigation."¹⁶²

¹⁵⁷ Amnesty International, *supra* note 164.

¹⁵⁸ Azerbaijan Foundation of Democracy Development and Human Rights Protection Report, *supra* note 6. *See also* U.S. Department of Justice 2004, *supra* note 164.

¹⁵⁹ U.S. Department of Justice 2004, *supra* note 164.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Mammadov (Jalaloglu) v. Azerbaijan*, 11 January 2007.

163. Respondent Government may cite *Asadov and Others v. Azerbaijan* and *Ramazanova and Others v. Azerbaijan* in an attempt to show that the Court has already determined that Azerbaijan's judicial system is sufficiently impartial. However, what was presented to the Court in those cases are the laws and rules regarding the selection of judges and the role played in that process by the Minister of Justice.¹⁶³ In those cases, this Court did not consider the actual practices conducted in the courts when cases are brought before them. More importantly, the rule set forth by the Court in *Asadov* specifies a subjective test and an objective test to determine impartiality.¹⁶⁴ Under the objective test, "it must be determined whether there are ascertainable facts which may raise doubts as to the judges' impartiality. In this respect appearances may be of a certain importance."¹⁶⁵ Given the facts presented above, especially in light of the particular context of ethnic tension, there are serious doubts as to the judges' impartiality in this case.

g. Conclusion

164. The Applicants have no alternative but to seek justice outside of Azerbaijan and to seek it from this Court because of special circumstances that exist in this case which would make the Applicants' domestic remedies futile. Aside from the lack of impartiality and independence in the local judicial system, the respondent Government's participation in the ethnic persecutions of the Armenians, its failure to investigate the persecutions, and its failure even to offer assistance and protection to Armenians—a failure which continues today in the form of discrimination against Armenians and their cultural

¹⁶³ *Ramazanova and Others v. Azerbaijan*, 1 February 2007.

Asadov and Others v. Azerbaijan, 12 January 2006.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

legacy—lead only to the conclusion that ethnic Armenians have no avenue to justice within Azerbaijan.

165. **V. EXPOSÉ DE L'OBJET DE LA REQUÊTE*****STATEMENT OF THE OBJECT OF THE APPLICATION***

19.

Pecuniary and Non-Pecuniary Damages Sought

166. Applicants ask the Court to find the Azerbaijani government liable of violating Article 8, Article 3, Article 1 of Protocol No. 1, and Article 14. In finding Azerbaijan liable of violating these articles, we ask the Court to officially recognize the horrific events that occurred in the 1990 Baku pogroms. One of the most important remedies sought by Applicants is official recognition by the international community.

167. Along with official recognition by the Court as to the events that occurred, we ask the Court to grant Applicants both pecuniary and non-pecuniary damages.

168. In the case of Mr. Aslanyants, we ask the Court to award US\$100,000 for non-pecuniary damages (mental and physical damages) suffered by Mr. Aslanyants due to the actions and inactions of the Azerbaijani government. Moreover, we ask the Court to grant pecuniary damages in favor of Mr. Aslanyants to compensate him for his property interests lost in the 1990 pogroms, which have never been returned to him. This amount includes 20,000 Russian RUB for his flat; 40,000 Russian RUB for his furniture and other belongings left at his fully-furnished flat left in Baku; 120,000 Russian RUB for his lost monthly pension, which as of June 2009 totaled 10,080,000 Russian RUB; 15,000 Russian RUB for his father's 1953 model Moskvich, and US\$15,000 for the "Zhiguli," which the price Mr. Aslanyants would have received when he sold it to an antique collector. The total amount sought in pecuniary and non-pecuniary damages, on behalf of

Mr. Aslanyants, is **\$115,000 US Dollars and 10,275,000 Russian RUB**, plus additional past and future lost pension and plus an appropriate amount of interest.

169. In the case of Mrs. Barashyan, we ask the Court to award non-pecuniary damages for the mental and physical anguish suffered during the 1990 Baku pogroms in the amount of US\$100,000. Along with the non-pecuniary damages sought by Mrs.

Barashyan, we ask the Court to grant her pecuniary damages for the numerous property interests she lost due to the actions and inactions of the Azerbaijani government. We ask the Court to grant compensation of 200,000 Russian RUB for her flat left behind; 95,000 Russian RUB for personal property in the flat; 50,000 Russian RUB for the tailoring shop business was forced to give up; 28,000 RUB for her lost monthly pension, which as of June 2009 totaled 4,704,000 Russian RUB; and 75,000 Russian RUB for money she could not retrieve from the national bank. The total amount sought in pecuniary and non-pecuniary damages, on behalf of Mrs. Barashyan, is **\$100,000 US Dollars and 4,704,000 Russian RUB**, plus additional past and future lost pension and plus an appropriate amount of interest.

170. It is important to note that nearly all evidence to substantiate damages is unavailable to the Applicants due to the ethnic-cleansing they experienced, and much of the evidence is in the control of the respondent governments. If the Court does not believe there is enough evidence to substantiate the damages, then we ask the Court to order the governments to do an accounting of these losses, and an official investigation into the current market value of the above stated property interests lost by Applicants.

171. In addition to seeking pecuniary and non-pecuniary damages for Applicants, we also respectfully request the Court to award reasonable attorney's fees and costs in the

amount of US \$10,000 for the work done by the Willamette University College of Law Clinical Law Program.

172. We respectfully request the Court to properly grant compensatory damages and reasonable attorney's fees and costs for both Applicants as indicated above or in an amount the Court feels is just and proper.

**VI. AUTRES INSTANCES INTERNATIONALES TRAITANT OU AYANT
TRAITÉ L'AFFAIRE**
STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

20. Avez-vous soumis à une autre instance internationale d'enquête ou de règlement les griefs énoncés dans la présente requête? Si oui, fournir des indications détaillées à ce sujet.

Have you submitted the above complaints to any other procedure of international investigation or settlement? If so, give full details.

No.

VII. PIÈCES ANNEXÉES
LIST OF DOCUMENTS

21.

- a) Mr. Aslanyants's Affidavit and attachments demonstrating his attempts to get his property returned
- b) Mrs. Barashyan's Affidavit
- c) Amnesty International Press Release USSR: Pogrom in Azerbaizhan, EUR 46/04/90, UA 22/90, 16 January 1990. See attached. See also Amnesty International Report: 1991.

VIII. DÉCLARATION ET SIGNATURE
DECLARATION AND SIGNATURE

Je déclare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts.

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

Lieu/Place

Date/Date

(Signature du/de la requérant(e) ou du/de la représentant(e))
(Signature of the applicant or of the representative)