

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

FIRST SECTION

# CASE OF KHALIKOVA v. AZERBAIJAN

*(Application no. 42883/11)*

JUDGMENT

STRASBOURG

22 October 2015

**FINAL**

14/03/2016

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



**In the case of Khalikova v. Azerbaijan,**

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

András Sajó, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 29 September 2015,

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

# PROCEDURE

1. The case originated in an application (no. 42883/11) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Ms Nuriya Abazovna Khalikova (*Nuriyə Abəzovna Xalikova* - "the applicant"), on 14 July 2011.

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

3. The applicant alleged, in particular, that she had been deprived of her property in breach of Article 1 of Protocol No. 1 to the Convention and that the domestic proceedings had been conducted in breach of the requirements of Articles 6 and 13 of the Convention. She further alleged that she had been unlawfully deprived of her liberty and that her forcible eviction from her flat by the police had constituted a violation of Article 8 of the Convention.

4. On 28 January 2014 the application was communicated to the Government. It was also decided to grant the application priority treatment under Rule 41 of the Rules of Court.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Baku. She is an Azerbaijani national of Tatar origin and has no relatives in Azerbaijan.

6. The applicant was the owner of flat no. 51, with a surface area of 28.5 sq. m, situated on the first floor of building no. 58 on Fuzuli street, in Baku.

7. The building where the applicant's flat was located was built in 1908 and was classified as an architectural monument. It was registered on the list of "Historical and Cultural Immovable Property of Local Importance" established by a decision of 2 August 2001 of the Cabinet of Ministers of the Republic of Azerbaijan.

### A. Act issued by the city authority in respect of the area where the applicant's flat was located

8. On 24 September 2008 the Head of the Baku City Executive Authority ("the BCEA") issued order no. 511 entitled "Concerning Construction of a New Park Complex, Relocation of Residential and Non-Residential Accommodation from that Area" *(Yeni park kompleksinin salınması, ərazidə yerləşən yaşayış və qeyri-yaşayış sahələrinin köçürülməsi haqqında*) ("the order of 24 September 2008"). The order of 24 September 2008 reads:

> "The Baku City Executive Authority has in recent years taken the appropriate steps in the organisation of renovation projects, which comply with international standards, in the capital of the Republic of Azerbaijan within the framework of the economic development programmes carried out in the Republic, and in this connection, in accordance with the economic development of the city, renovation and reconstruction projects have been continuously carried out in areas which are for the communal use of inhabitants, such as municipal roads, streets and squares, parks and avenues, as well as residential areas.
>
> In accordance with an instruction from the President of the Republic of Azerbaijan, the task of demolishing the buildings located behind Heydar Aliyev Palace (the area bounded by Fuzuli, Samed Vurgun, Shamsi Badalbeyli and Tobchubashov streets) and constructing a new garden-park complex in that area was assigned to the Baku City Executive Authority and it was decided that the compensation due in respect of residential and non-residential premises situated in that area would be paid by the State Oil Company of the Republic of Azerbaijan.
>
> It should be emphasised that, as current legislation has not so far provided rules concerning evaluation in connection with the relocation of dwellings situated in a demolition area and purchased for State needs, there are difficulties in relation to the relocation of the population residing in such dwellings. Moreover, when such relocation is carried out by State bodies, the population overestimates the value of their homes, offering them for a price several times higher than their market value,

resulting in additional expense. For these reasons, it was decided that a natural person, namely Kazimov Rufan Habil oglu, would be contracted to conduct negotiations with the people residing at the above-mentioned addresses and carry out their relocation.

In this connection, on the basis of a letter from the Baku City Executive Authority, the State Oil Company of the Republic of Azerbaijan transferred 5 (five) million manats to the bank account of natural person Kazimov Rufan Habil oglu for the purpose of executing the aforementioned tasks, and this amount was duly spent.

In the next phase, the State Oil Company did not consider it appropriate to transfer the remaining part of the amount directly to the bank account of a natural person and instead proposed to transfer it to the Baku City Executive Authority's bank account.

In this connection, the Baku City Executive Authority addressed a letter dated 17.09.2008, no. 7-363/4g, to the Ministry of Finance of the Republic of Azerbaijan and, by a letter of 18.09.2008, no. 04/02/03-333-5099, the Ministry confirmed that it did not object to the carrying out of the above-mentioned operations.

Taking into consideration the aforementioned and the corresponding instruction issued by the honourable President,

1. As the construction of a park was planned in the area located behind Heydar Aliyev Palace (the area bounded by Fuzuli, Samed Vurgun, Shamsi Badalbeyli and Tobchubashov streets), the relocation of residential and non-residential areas located on that territory should be ensured by compensating them in accordance with the requirements of the legislation.

2. The negotiations with the owners of residential and non-residential facilities located in that area and their relocation in exchange for compensation should be conducted by natural person Kazimov Rufan Habil oglu on the basis of the contract concluded between the parties and, following the end of these operations, the Baku City Executive Authority should be provided with the corresponding documents.

3. The accountancy service of the Baku City Executive Authority's Administration should ensure the transfer to the bank account of R.H. Kazimov, a natural person, of the amount paid to the Baku City Executive Authority's bank account by the State Oil Company of the Republic of Azerbaijan in connection with the aforementioned relocation.

4. The Head of the Baku City Executive Authority's Administration, B. Farajbayli, should be designated responsible for the supervision of the execution of the order."

## B. Attempts to evict the applicant from her flat

### *1. The applicant's version of the events*

9. At the beginning of 2010 the Baku City Executive Authority (BCEA) began to construct fences around the building in which the applicant resided. The BCEA's employees verbally instructed the residents to leave their homes in exchange for compensation of 1,500 Azerbaijani manats (AZN) per sq. m of their property.

10. In February 2010, at the request of the BCEA, various commercial companies occupying the ground floor of the building were evicted. The applicant's neighbours faced the same situation and many of them gave in to

the BCEA's pressure. In particular, residents occupying the flats situated on the top floor of the building left their homes. Following their departure, the BCEA's employees destroyed these flats and the roof of the building. As a result, rainwater began to enter into the building, making living conditions impossible for the applicant.

11. In support of her version of the events, the applicant submitted several video recordings. It is apparent from the video recordings that the building in question was surrounded by fences and workers were demolishing the building's roof. It is also clear from the video recordings that the premises and flats located on the ground and top floors of the building, as well as other buildings next to the latter building, had already been demolished. In support of her claim, the applicant also submitted photographs which corroborate the video recordings.

12. In March 2010 a high-ranking official of the BCEA, Z.I., asked the applicant and other remaining residents of the building to leave their flats and tried to impose a one-week deadline for vacating them. The BCEA did not ask the residents to conclude a contract of sale with it, but instead with a third party named Rufan Kazimov. This person, who had no official role within the BCEA, acted as the purchaser in all the contracts of sale concluded with the residents of the area.

13. From the beginning of April 2010, telephone lines to the building were cut off for a period of two months and power cuts became usual. The building's water pump disappeared. In the view of the applicant, all these actions were taken by the BCEA in order to force her and other residents to vacate their flats.

14. Following the applicant's complaints to various domestic authorities about the unlawful actions of the BCEA's employees, the executive authorities informed the applicant, by a letter dated 7 July 2010 and signed by the Head of the BCEA's Administration, that a new park was to be constructed in that area and that she would be compensated in the amount of AZN 1,500 per sq. m of her property. The letter reads:

> "Your complaint, forwarded from the General Prosecutor's Office of the Republic of Azerbaijan to the Baku City Executive Authority, was examined.
>
> You are hereby informed that it has been decided, in accordance with "the General Development Plan of Baku City" (*Bakı Şəhərinin İnkişafının Baş Planı*) approved by decision no. 182 of the Soviet of Ministers of the Republic of Azerbaijan on 18 May 1987 and decision no. 9/340 of the Executive Committee of the Soviet of People's Deputies of 30 August 1989, to demolish the buildings situated in the area behind Heydar Aliyev Palace (the area bounded by Fuzuli, Samed Vurgun, Shamsi Badalbeyli and Tobchubashov streets) and to construct a garden-park complex there.
>
> In accordance with an instruction from the President of the Republic of Azerbaijan, the task of demolishing the buildings located in that area and the construction of a modern garden-park complex has been assigned to the Baku City Executive Authority.

> The eviction of the area and the payment of compensation are to be carried out in accordance with the Head of the Baku City Executive Authority's order no. 511 of 24 September 2008 and it has been decided to pay compensation of AZN 1,500 per sq. m of residential and non-residential accommodation located in that area."

15. The applicant refused to leave her flat in these circumstances.

*2. The Government's version of the events*

16. The Government did not submit any comment in respect of the applicant's submissions.

## C. Events of 19 November 2010

*1. The applicant's version of the events*

17. At around 9 a.m. on 19 November 2010 the applicant's building was surrounded by the BCEA's employees and police officers.

18. At 9.11 a.m. there was a knock on the door of the applicant's flat. When the applicant looked through the peephole, she saw about ten individuals including police officers and other employees. They ordered her to open the door. The applicant refused to do so, saying that there was no court order for her eviction.

19. Following the applicant's refusal, they broke down the door and entered the flat against the applicant's will. The applicant asked them to leave her flat immediately, however they refused to do so.

20. According to the applicant, at around 9.30 a.m. she called an ambulance because she did not feel well. The ambulance arrived quickly, but the police did not allow the doctor to enter the flat.

21. When the applicant's condition worsened, she was taken outside by a police officer and the doctor was able to treat her in front of the building.

22. In support of her version of the events, the applicant submitted video recordings showing the circumstances of her eviction from the flat. It is apparent from the video recordings that people were breaking down the door of the applicant's flat since the applicant refused to open it, saying that the case was still pending before the court. The next footage shows a group of the BCEA's employees and police officers in uniform who walked into the flat and took the applicant's belongings and furniture while she was still present in the flat, lying on a sofa. It is also apparent from the video recordings that the applicant did not feel well and asked the police officers and the BCEA's employees to call the doctor who was outside the building at that time.

23. At 10 a.m. the applicant was taken to Nasimi District Police Station No. 22, where she was detained in a room with other residents of the building. At the police station, she felt unwell and an ambulance was called again. She was examined by a doctor and a relevant medical certificate was

issued in this respect. It is recorded on the medical certificate that the ambulance arrived at the police station at 10.45 a.m. and provided the applicant with medical assistance at the police station.

24. At 6.30 p.m. a police officer asked the applicant and other residents to make statements indicating that they had been taken to the police station because they had created a disturbance. However, they refused to do so.

25. The police officer then asked them to sign a statement confirming that they had refused to write any statement. The applicant refused to do so.

26. At 7.10 p.m. the applicant was released from the police station. She was not provided with any document concerning her detention by the police.

27. Following her release, the applicant returned to her flat which, by this time, had been wrecked by the BCEA's employees. She was informed by Z.I., the official of the BCEA, that her belongings and furniture had been removed from the flat and taken to a warehouse. After her arrival at the warehouse, the applicant discovered that many of her belongings and furniture had been damaged and that some of them had disappeared.

28. On 22 November 2010 the building was completely demolished by the BCEA.

*2. The Government's version of the events*

29. On 19 November 2010 the applicant and a group of people were taken to the police station because they had organised an unauthorised demonstration protesting against their relocation. As they refused to abandon the gathering despite a police warning, the police took the applicant and other attendees to the police station at 11.10 a.m. and they were released at 1.50 p.m. following discussions with them. The police did not draw up a record of detention in respect of the applicant because she had not been detained in an administrative sense.

30. In support of their version of the events, the Government submitted a report (*raport*), dated 19 November 2010, stating that eight individuals, including the applicant, had been taken to Nasimi District Police Station No. 22 because they had tried to organise an unlawful gathering. This report was addressed to the Head of Nasimi District Police Station No. 22 and was signed by three police officers. The relevant part of the report reads:

> "I am writing to inform you that at around 11 a.m. on 19 November 2010, on the basis of an instruction from the police administration that several individuals who had been holding an unlawful demonstration on Fuzuli street were to be taken to Police Station No. 22, we took them to this police station, where it was established that the identity of these individuals was as follows:
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> ...
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> We ask you to order to take legal steps in respect of these individuals."

31. The Government also submitted an administrative offence record drawn up on 19 November 2010 according to which the applicant had been

warned under Article 298 of the Code of Administrative Offences concerning violation of the rule regulating the organisation and holding of gatherings. The exact time when the record was drawn up was not indicated and the record was not signed by the applicant.

32. The Government also submitted an extract from the "registration log of materials relating to administrative offences" *(inzibati xətalara dair materialların qeydiyyat kitabı*). According to the extract, the applicant was taken to the police station at 11.10 a.m. as a result of "an attempt to hold an unlawful demonstration" (*qanunsuz piketə cəhd*) and was released at 1.50 p.m.

## D. Domestic proceedings relating to the events of 19 November 2010

33. On 22 November 2010 the applicant lodged a criminal complaint with the court alleging the unlawful deprivation of her liberty by the police. She submitted the same factual information as that submitted to the Court (see paragraphs 17-27 above), claiming that on 19 November 2010 she had been unlawfully detained at Nasimi District Police Station No. 22 from 10 a.m. to 7.10 p.m. In this connection she submitted that she had been detained by the police to enable her forcible eviction from her flat to be organised. She further complained that her right to respect for her home had been violated because the police had unlawfully entered her flat.

34. In the course of the proceedings before the first-instance court, on 30 November 2010 the Head of Nasimi District Police Station No. 22 submitted a letter concerning the events of 19 November 2010 to the court. The letter, which was addressed to the President of the Nasimi District Court, reads:

> "Further to your letter of 23 November 2010 no. 6(006)-40/2010, you are hereby informed that at 11 a.m. on 19 November 2010 citizen Khalikova Nuriya Abazovna and another eight individuals, ... , were taken to Nasimi District Police Station no. 22 by police officers in accordance with the instruction issued by the Nasimi District Police administration, since they had tried to hold an unlawful demonstration in front of building no. 58 on Fuzuli street. "Prophylactic conversations" (*profilaktik söhbətlər*) were held with them, reports were drawn up in respect of them under Article 298 of the Code of Administrative Offences and they were released, as provided for by the law, following a period not exceeding three hours."

35. It is apparent from the transcript of the hearing held on 10 December 2010 that two witnesses, F.G. and L.A., testified at the hearing in support of the applicant's submissions. In particular, they stated that the applicant was taken to the police station at 10 a.m. and that they had been released at around 8 p.m. They further submitted that the police officers and other employees had unlawfully entered their flat by breaking down the door and that they had been detained by the police so that their forcible eviction from their flat could be effected.

36. The representative of Nasimi District Police Station No. 22, the police officer E.N., was also heard at the same hearing. He stated before the court that the applicant had not been ill-treated during her stay at the police station and that he had personally called an ambulance when she felt unwell. The applicant was then provided with medical assistance by a doctor at the police station. He further stated that initially he had not known why the applicant and the other people had been at the police station and had learnt later that they had been taken there because they had participated in an unlawful demonstration.

37. It is also apparent from the transcript of the hearing that – in support of her claim that she had been taken to the police station at 10 a.m. – the applicant submitted a copy of the medical certificate of 19 November 2010 confirming that an ambulance had arrived at the police station at 10.45 a.m. and had provided her with medical assistance. The applicant also submitted the video recordings showing how the police had broken down the door of her flat and entered it, and how her belongings and furniture had then been taken away by the BCEA's employees in the presence of the police officers. During the examination of the video recordings at the hearing, it was established that the video recordings had been filmed on the applicant's mobile phone camera between 9.11 a.m. and 9.45 a.m. on 19 November 2010 and their authenticity was confirmed.

38. On 20 December 2010 the Nasimi District Court dismissed the applicant's claim. The court relied on the letter of 30 November 2010 submitted by the Head of Nasimi District Police Station No. 22 and the administrative offence record of 19 November 2010, according to which the applicant had received a warning from the police on account of holding an unlawful demonstration. The court also held that there was no criminal element in that case and that the applicant could appeal against her administrative conviction by the police. The court made no mention of the evidence submitted by the applicant in support of her claim, such as the video recordings and the medical certificate. The court was also silent as to the legality of the police intrusion into the applicant's flat. As to the witness statements from F.G. and L.A., the court contented itself with holding that the witnesses had not stated that they had been ill-treated at the police station during their detention, without considering their submissions that the applicant had been taken to the police station at 10 a.m. and released at around 8 p.m. and that the police had unlawfully entered their flat in order to carry out a forcible eviction. The relevant part of the decision reads:

> "The court, having examined the parties' explanations and the documents submitted to it, considers that the complaint should not be granted.
>
> In fact, it is stated in letter no. 9/13-22-4019 dated 30.11.2010, which was submitted to the court, that at 11 a.m. on 19 November 2010 citizen Khalikova Nuriya Abazovna and other eight individuals, ... , were taken to Nasimi District Police Station no. 22 by police officers in accordance with the instruction issued by the Nasimi District Police

administration as they tried to hold an unlawful demonstration in front of building no. 58 on Fuzuli street. Prophylactic conversations were held with them, reports were drawn up in respect of them under Article 298 of the Code of Administrative Offences and they were released, as provided for by the law, following a period not exceeding three hours.

The report dated 19 November 2010 submitted at the court hearing by police major E.N. from Nasimi District Police Station no. 22 states that police officers ... drew up this report, addressed to M.M., the Head of Nasimi District Police Station No. 22, indicating that the applicant, Khalikova Nuriya, and the other individuals indicated in the report were taken to Police Station no. 22 at the request of the administration because they had held a gathering at 58 Fuzuli Street. The report included a request for an order to take legal steps in respect of these individuals.

...

Administrative offence record no. 943 drawn up on 19 November 2010 in respect of Khalikova Nuriya, which was submitted to the court, states that N. Khalikova was found guilty under Article 298 of the Code of Administrative Offences for unlawfully demonstrating at 58 Fuzuli Street and a warning was issued to her as an administrative punishment. N. Khalikova refused to sign the record or to give any explanation.

F.G. and L.A., who were questioned at the court hearing in the capacity of witnesses, stated that when they were taken to the police station and during their stay there they had not witnessed any acts of ill-treatment or any other unlawful action against the applicant. On the contrary, when they were on the second floor of the police station, they and other individuals present there were well-treated by the police officers and, when N. Khalikova felt unwell, the police officers had called an ambulance. These facts were also confirmed by the applicant.

Taking into consideration the aforesaid, the court considers that the facts described in the present complaint do not provide grounds for a criminal prosecution. For this reason, the complaint should not be examined in accordance with the provisions of the Code of Criminal Procedure of the Republic of Azerbaijan.

In fact, it was established during the court examination that the applicant had been invited to attend Nasimi District Police Station No. 22 of Baku City in connection with the allegation that she had committed an administrative offence."

39. The applicant appealed against this decision, reiterating that she had been unlawfully detained by the police and that the police had unlawfully entered her flat by breaking down the door. She pointed out that her claim was supported by witness testimonies, video recordings and a medical certificate. In this connection, she pointed out that she had neither organised nor participated in any demonstration on 19 November 2010. She further submitted that, in any event, she could not have participated in such a gathering held at 11 a.m., as alleged by the police, because she had been taken to the police station at 10 a.m. and this fact was supported by the medical certificate which established that the ambulance arrived at the police station at 10.45 a.m. to give her first aid. Lastly, she submitted that it was clear from the video recordings that the police officers and the BCEA's employees had unlawfully entered her flat.

40. On 13 January 2011 the Baku Court of Appeal dismissed the appeal without addressing the applicant's particular arguments.

41. The applicant received the appellate court's decision on 29 January 2011.

## E. Domestic proceedings relating to the applicant's deprivation of her property and eviction from flat

### *1. First set of proceedings*

42. Prior to the physical demolition of her flat, on 14 April 2010 the applicant brought an action against the BCEA, the Nasimi District Executive Authority ("the NDEA") and the Nasimi District Police Office ("the NDPO") claiming violation of her property rights. She claimed, in particular, that the actions of the BCEA's employees seeking to evict her and other residents from their flats had been unlawful and asked the court to eliminate the obstacles preventing her from enjoying her ownership rights. She maintained that the construction of the fences around her flat by the BCEA and the demolition of the buildings located in the neighbourhood had been unlawful and asked the court to declare unlawful the BCEA's orders of 30 August 1989 and 24 September 2008 providing her relocation and the construction of a park in that area. She submitted in this connection that the BCEA was not entitled under domestic law to make decisions on expropriation and that the Cabinet of Ministers of the Republic of Azerbaijan had not taken any expropriation decision in respect of the building where she resided, as required by the domestic law where such expropriation was to be carried out. She further argued that, as the building in question was classified as an architectural monument, it should be protected by the State and could not be demolished.

43. On 22 April 2010 the Nasimi District Court refused to admit the claim. The court held that the applicant had failed to submit either original or notarised copies of the documents in support of her claim.

44. On 27 May 2010 the Baku Court of Appeal quashed the first-instance court's decision and remitted the case to the first-instance court for examination.

45. In the proceedings before the first-instance court, the hearings were postponed several times due to the absence of the BCEA's representative.

46. At the hearing held on 2 September 2010 the representative of the BCEA lodged an objection disputing the territorial competence of the Nasimi District Court. The judge dismissed the objection. The BCEA appealed against the court's dismissal decision.

47. On 11 October 2010 the Baku Court of Appeal dismissed the BCEA's appeal.

48. On 4 November 2010 the Nasimi District Court scheduled a hearing on the merits for 22 November 2010.

49. On 13 November 2010 the BCEA lodged an action with the Nasimi District Court against nineteen residents of the area, including the applicant. The BCEA asked the court to order the residents' eviction from their flats, the cancellation of their ownership rights and the demolition of the buildings located in that area. By way of legal basis for the claim, the BCEA relied on the instructions of the President of the Republic and the order of 24 September 2008.

50. Following the events of 19 November 2010 and the physical demolition of the building on 22 November 2010, the applicant lodged an additional claim for AZN 508,038 in respect of pecuniary damage and AZN 100,000 for non-pecuniary damage for demolition of her flat.

51. On an unspecified date the applicant lodged a request with the court seeking suspension of the examination of the BCEA's claim until the end of the civil proceedings instituted by her against the BCEA. On 30 November 2010 the Nasimi District Court dismissed the applicant's request. On the same day the Nasimi District Court decided to join the two proceedings and examine them together.

52. The applicant appealed against this decision. On 28 December 2010 the Baku Court of Appeal dismissed the applicant's appeal.

53. In the meantime, on an unspecified date, the applicant submitted to the court additional documents in support of her claims in respect of pecuniary and non-pecuniary damage. In particular, she submitted an expert report dated 29 December 2010 from a private company stating that the market value of her flat was AZN 71,000, since the market price of a similar flat located in the same area as the applicant's flat was AZN 2,500 per sq. m. She also submitted a document dated 21 December 2010 from the Women's Crisis Centre. The document indicated that on 24 November 2010 the applicant had applied to the centre suffering from insomnia, loss of appetite and psychological post-traumatic stress.

54. On 12 January 2011 the Nasimi District Court delivered its judgment on the merits. The court dismissed the applicant's claim noting that, as the building in question had been demolished, restitution of the property was not possible. The court further held that the main dispute between the applicant and the BCEA concerned the amount of the proposed compensation and that the applicant could lodge a separate lawsuit on this issue. However, the first-instance court's judgment was silent as to the specific complaints raised by the applicant in her lawsuit. In particular, the court did not address the lawfulness of the BCEA's actions, or of the building's demolition or of the applicant's eviction from her flat. The relevant part of the judgment reads:

> "It is apparent from the Baku City Executive Authority's order of 24 September 2008 headed "Concerning Construction of a New Park Complex, Relocation of

> Residential and Non-Residential Accommodation from that Area" that it was decided that as the construction of a park was planned in the area located behind Heydar Aliyev Palace (the area bounded by Fuzuli, Samed Vurgun, Shamsi Badalbeyli and Tobchubashov streets), residential and non-residential properties located in that area should be relocated and compensation paid in accordance with the legal requirements. Furthermore, the negotiations with the owners of residential and non-residential properties located in that area and their relocation in exchange for compensation were to be conducted by Kazimov Rufan Habil oglu, a natural person, on the basis of a contract concluded between the parties, and following the end of these operations the Baku City Executive Authority should be provided with all documents relating to the operation.
>
> It is stated in the Baku City Executive Authority's letter of 7 April 2010, no. kl/112/10, addressed to the applicant that, it being planned to demolish buildings situated in the area between Fuzuli (former Basin) and S. Badalbayli (former Dmitrov) Streets, from Fuzuli Square to S. Vurgun Street in accordance with the General Development Plan of Baku City approved by decision no. 9/340 of the Baku City Executive Committee of the Soviet of People's Deputies of 30 August 1989, this area is to be demolished and a new garden-park complex constructed there. As the area in question is to be included in the garden-park complex, it was decided to pay compensation of AZN 1,500 per sq. m for residential and non-residential properties located in that area, in accordance with market value.
>
> The valuation report of 29 December 2010, no. MB 03/719, by "MBA-Marketing Business Analysis" consulting and valuation company states that the market value of flat no. 51 located at 58 Fuzuli Street in the Nasimi District in Baku was AZN 71,000 for 29 December 2010, namely AZN 2,500 per sq. m.
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> ...
>
> It was established during the court's examination that flat no. 51 located at 58 Fuzuli Street in the Nasimi District in Baku, owned by the applicant as her private property, had been demolished by the respondent and it is therefore impossible to restore it to its previous condition. For this reason, the applicant's claims in this respect could not be granted.
>
> The Court considers on the basis of the aforementioned that the claim of the applicant Khalikova Nuriya Abazovna against the Baku City Executive Authority and others concerning "prevention of interference with her property rights, payment of pecuniary and non-pecuniary damage" should not be granted and it should be explained to the applicant Khalikova Nuriya Abazovna that she has the right to bring an action before a court with regard to the amount of compensation proposed by the respondent parties."

55. On 11 February 2011 the applicant appealed against the first-instance court's judgment. She complained, in particular, that the court had failed to examine her complaint concerning the unlawful demolition of her flat by the BCEA and the violation of her property rights.

56. On 2 June 2011 the Baku Court of Appeal upheld the judgment of 12 January 2011, reiterating the first-instance court's findings. The appellate court's judgment was almost identical in its wording to the first-instance court's judgment of 12 January 2011.

57. On 1 October 2011 the applicant lodged a cassation appeal against this judgment. She relied on Articles 6 and 8 of the Convention and

Article 1 of Protocol No. 1 to the Convention, complaining that she had been unlawfully deprived of her property, that her right to respect for private and family life and home had been violated and that the domestic courts had failed to deliver a reasoned judgment.

58. On 13 December 2011 the Supreme Court upheld the Court of Appeal's judgment.

*2. Second set of proceedings*

59. In the meantime, on 1 June 2010, prior to the physical demolition of her flat, the applicant lodged another action against the BCEA, the NDEA and the NDPO claiming that the destruction of the roof of the building and the flats situated on the top floor had made her flat unfit for human habitation. She asked the court to order the respondents to repair the building and restore it to the condition it had been on 31 December 2009.

60. On 8 June 2010 the Nasimi District Court refused to admit her claim, finding that a claim against the BCEA should be lodged with the Sabail District Court.

61. On 6 July 2010 the applicant lodged another action against the BCEA, the NDEA and the NDPO. The applicant reiterated her previous complaints. She also asked the court to provide her with a copy of the contract, if any, concluded between the BCEA and Rufan Kazimov concerning the purchase of the buildings situated in the area in question. The applicant also complained about unlawful actions of the BCEA's employees, alleging that they had cut both the power cable to her air-conditioning unit and the water supply pipe, in order to force her to leave the flat.

62. On 19 July 2010 the Nasimi District Court refused to admit her claim, holding that a claim against the BCEA should be lodged with the Sabail District Court.

63. On 27 July 2010 the applicant appealed against the decision of 19 July 2010.

64. On 26 August 2010 the Baku Court of Appeal quashed the impugned decision and remitted the case to the first-instance court for examination. The court held that the applicant's action should be examined by the Nasimi District Court.

65. On 27 January 2011, more than two months after the demolition of her home, the applicant concluded a contract of sale with Rufan Kazimov. In accordance with the contract the applicant sold her flat of 28.5 sq. m, which no longer physically existed at the time when the contract was concluded, to Rufan Kazimov for the amount of AZN 42,750, in other words AZN 1,500 per sq. m.

66. On 20 February 2011 the applicant lodged claims in addition to her previous lawsuit. She asked the court to declare unlawful the contract of sale concluded between her and Rufan Kazimov because it had been

concluded under pressure. She submitted in this connection that she had been forced to conclude the contract because she had become homeless following the demolition of her flat and had not had any choice.

67. On 21 April 2011 the Nasimi District Court delivered its judgment on the merits. The court dismissed the applicant's claim, holding that the contract had been concluded in accordance with the relevant law within the framework of relocating the residents of the area where the construction of the park was planned. The court further held that the applicant had failed to prove that her rights had been violated by the BCEA.

68. On 20 May 2011 the applicant appealed against this judgment, reiterating her previous complaints.

69. On 11 August 2011 the Baku Court of Appeal upheld the first-instance court's judgment.

70. On 19 December 2011 the Supreme Court upheld the Baku Court of Appeal's judgment.

## II. RELEVANT DOMESTIC LAW

### A. The Constitution of the Republic of Azerbaijan

71. Article 13 § I of the Constitution provides:

> "Property in the Republic of Azerbaijan is inviolable and is protected by the State."

72. Article 29 § IV of the Constitution provides:

> "No one shall be deprived of his or her property without a court decision. Total confiscation of property is not permitted. Alienation of the property for State needs may be permitted only subject to prior and fair compensation corresponding to its value."

73. Article 33 of the Constitution provides:

> "1. Everyone has the right to the inviolability of his or her home.
>
> 2. Nobody has the right to enter a private home against the will of its inhabitants except in the case of the circumstances provided for by law or by a court decision."

74. Article 40 § II of the Constitution provides:

> "Everyone should respect our historical, cultural and immaterial heritage, take care of it, and protect historical and cultural monuments."

75. Article 43 § I of the Constitution provides:

> "No one shall be deprived of his or her home."

## B. The Code of Administrative Offences ("the CAO"), as in force at the material time

76. Article 298 of the CAO provided:

**Article 298 - Violation of the rule regulating the organisation and holding of gatherings, demonstrations, protests, street rallies and pickets**

"298. Violation of the rule, laid down in legislation, regulating the organisation and holding of gatherings, demonstrations, protests, street rallies and pickets is punishable by a warning or by a fine ranging from AZN 7 to AZN 13."

77. Article 398 of the CAO provided that an administrative arrest (*inzibati qaydada tutma*) is a restriction of the liberty of a natural person for a limited period of time which may be applied in exceptional cases if it is necessary in order to examine thoroughly and promptly a case concerning an administrative offence or to ensure the execution of a decision relating to an administrative offence. The duration of this type of arrest may not exceed three hours (Article 399.1). Article 400 of the CAO provided that in all circumstances a record of administrative arrest (*inzibati qaydada tutma haqqında protokol*) must be drawn up containing the following information: the date and place where the record was drawn up; the official position, name, surname and patronymic of the person who drew up the record; the personal details of the arrested person; the date of and reasons for the arrest. The record must be signed by the person who drew up it and the arrested party. If the latter refuses to sign it, this fact must be noted in the record.

## C. Law on Freedom of Assembly of 13 November 1998, as in force at the material time

78. Article 5 provided that the organisers of an assembly should inform the relevant domestic authority in writing about their intention to hold such an assembly.

79. Article 14 set out the powers and duties of the police in connection with the holding of an assembly. Article 14.II provided that the police had the right to inform organisers of and participants in an assembly of the need for its suspension or dispersal, to order organisers and participants to use all available means for such suspension of the assembly and dispersal of participants, to warn organisers and participants that force would be used if an order to suspend the assembly and have its participants disperse was not executed, to use appropriate force to ensure the suspension of the assembly and the dispersal of the participants, and to arrest anyone failing to comply with the order for suspension of the assembly and dispersal of the participants.

## D. The Civil Code, as in force at the material time

80. Article 157.9 of the Civil Code provided:

> "Private property may be alienated by the State, when required for State or public needs, only in the instances permitted by law for the purposes of building roads or other means of communication, delimiting the State border strip or constructing defence facilities, by a decision of the relevant State authority [the Cabinet of Ministers], and subject to prior payment of compensation in an amount corresponding to its market value".

81. In Presidential Decree No. 386 of 25 August 2000 dealing with various aspects of implementation of the Civil Code, as amended by Presidential Decree No. 78 of 17 June 2004 and as in force at the material time, the Cabinet of Ministers was designated as "the relevant State authority" referred to in Article 157.9 of the Civil Code.

82. Article 203.3 of the Civil Code provided:

> "203.3. Forcible deprivation of property is not permitted, except for the following measures taken on grounds provided for by law:
>
> 203.3.1. forfeiture of property for liabilities;
>
> 203.3.2. alienation of property which, by law, cannot belong to a given person;
>
> 203.3.3. alienation of immovable property in connection with the purchase of the land;
>
> 203.3.4. purchase of badly maintained cultural assets;
>
> 203.3.5. requisition [alienation of property in connection with natural disasters, technological accidents, epidemics and other emergencies];
>
> 203.3.6. confiscation;
>
> ...
>
> 203.5. The alienation of property owned by individuals and legal persons for State or public needs shall be carried out in accordance with paragraph IV of Article 29 of the Constitution of the Republic of Azerbaijan."

83. Article 207 of the Civil Code provided:

> "Where it is impossible to alienate a plot of land for State needs without terminating the ownership rights over buildings, structures or other immovable property located on that land, the State may purchase such property".

## E. The Housing Code, in force from 1 October 2009, as in force at the material time

84. Article 5 of the Housing Code provided:

> "1. Everyone has the right to the inviolability of his or her home. Nobody has the right to enter a private home against the will of its inhabitants except in the circumstances provided for by law or by a court decision.

2. Entry into a private home against the will of its inhabitants is permitted only in the circumstances and procedure provided for by law for the purposes of saving citizens' lives and (or) property in the event of natural disaster, mass disorder or any other emergency situation, ensuring their personal or public security, as well as arresting individuals suspected of having committed a criminal offence, preventing the commission of criminal acts where there is no doubt about their imminent commission, or determining the circumstances of a previously committed criminal offence or a catastrophe.

3. With the exception of the grounds and procedures provided for by this Code and other laws, nobody may be evicted from his or her dwelling, and nobody's right of use of his or her dwelling or associated utilities may be restricted."

85. Article 31 of the Housing Code provided that, in connection with the expropriation of land for State needs, privately owned accommodation located on that land could be alienated from the owner by way of a State purchase. The purchase procedure was conducted by the relevant executive authority (the Cabinet of Ministers) and required a Cabinet of Ministers' decision on the purchase (taken concomitantly with the decision on expropriation of the land), registration of that decision in the State property register, notification of the decision to the owner after the registration and at least one year in advance of the planned purchase, and a mutual agreement with the owner concerning the purchase price, the payment of various relocation-related expenses, the payment schedule and other terms. For a period of one year after notifying the owner of the decision, the property could not be purchased without the owner's consent. In the event that the owner withheld his consent beyond that period, or disagreed with the price or other terms of the purchase, the Cabinet of Ministers could apply to a court requesting resolution of the dispute or a compulsory purchase order, but not later than two years from the date of notification of the owner about the purchase decision.

86. In Presidential Decree No. 153 of 27 August 2009 dealing with various aspects of implementation of the 2009 Housing Code, as in force at the material time, the Cabinet of Ministers was designated as "the relevant executive authority" referred to in Article 31 of the 2009 Housing Code.

## F. Law on Protection of Historical and Cultural Monuments of 10 April 1998, as in force at the material time

87. Article 10 provided:

**Article 10 – Inviolability of monuments**

"The modification of the artistic-aesthetic appearance of monuments, or their demolition, or the carrying out of restorative, constructional, maintenance or other works which might involve risk to them is forbidden."

## III. RELEVANT INTERNATIONAL INSTRUMENTS AND REPORTS

88. The relevant part of Article 11§1 of the International Covenant on Economic, Social and Cultural Rights (ratified by Azerbaijan on 13 August 1992) reads:

> "1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions..."

89. In its General Comment No. 7: The Right to adequate housing (art. 11 (1) of the Covenant): forced evictions – which was adopted at its sixteenth session in 1997 – the Committee on Economic, Social and Cultural Rights provides:

> "1. In its General Comment No. 4 (1991), the Committee observed that all individuals should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. It concluded that forced evictions are prima facie incompatible with the requirements of the Covenant...
>
> 3. ... The term "forced evictions" as used throughout this General Comment is defined as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, or access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.
>
> 4. The practice of forced evictions is widespread and affects persons in both developed and developing countries. Owing to the interrelationship and interdependency which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions..."

90. In May 2013 the UN Committee on Economic, Social and Cultural Rights considered the third periodic report of Azerbaijan (E/C.12/AZE/CO/3) and adopted, at its twenty-eighth meeting held on 17 May 2013, *inter alia*, the following concluding observations:

> "22. The Committee is concerned about the information received on the thousands of forced evictions, unlawful expropriations and demolitions with little or no notice carried out in the capital Baku primarily in respect of apartments and homes in middle-class neighbourhoods for the purpose of building parks, highways and luxury apartments. The Committee is also concerned about the lack of consultation, adequate compensation and effective legal remedies (art. 11).
>
> The Committee urged the State party to halt all expropriations that do not fully comply with the established international human rights standards. The Committee urges the State party to guarantee the right to appeal in domestic courts to these households and to provide effective legal remedies, adequate compensation and guarantees of adequate alternative housing.

The Committee also urges the State party to ensure that any relocation of homes necessary for city renewal is carried out with prior consultations among affected households, with their informed consent and with full respect to the safety and dignity of people following an adequate and transparent procedure.

The Committee further draws the State party's attention to its General Comment No. 7 (1997) on forced evictions..."

91. The relevant extracts from "The Honouring of Obligations and Commitments by Azerbaijan", Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), by co-rapporteurs Mr Pedro Agramunt and Mr Joseph Debono Grech (20 December 2012, Doc. 13084), read:

"**7.6 House demolitions**

278. The Baku Mayor's office began an expropriation campaign in 2009 in order to build a "garden-park" complex, among other construction projects, as part of a reconstruction programme. Those who refused compensation or resettlement were evicted. According to the authorities, some dissatisfaction emerged with regard to the amount of the financial compensation given, but a large majority of the residents agreed with the standard financial proposal.

279. During our meetings with representatives of civil society, criticism was voiced in this respect. Their concerns are many: firstly, the whole process lacks transparency. Long-term planning is not public enough; there is no public access to documentation; the procedure and decision making process are unclear; and in some cases inhabitants are forced to leave their homes at a very short notice. We were informed that at none of the courts' hearings where local residents have challenged the demolition of their houses have the Baku City authorities presented an urban development programme.

280. Secondly, forced evictions are against the Azerbaijani law in force, which guarantees the right to private property and allows the State to expropriate only in limited cases, such as for national defence or State purposes. Expropriations must be based on a court order. Many demolitions have been carried out without such an order or in some cases, despite the court decision prohibiting demolition pending the final outcome of the court proceedings.

281. Thirdly, there is a single price of USD 1,900 per square meter, irrespective of a property's use, age or condition. The authorities emphasised to us that the premises to be destroyed are mostly old and dilapidated. On the other hand, it is true that some owners have valued properties in central Baku at USD 5,000 per sq. m, and in some cases even more, but during our discussions it became clear that such prices only concerned well-located apartments in newly constructed buildings. The inhabitants have not received compensation for the land on which their houses were located in contradiction to the law in force.

282. Furthermore, to date, 30 houses which were designated as architectural monuments by the Cabinet of Ministers' decision No. 132 (2001) have been demolished. Their owners have received the same standard compensation.

283. According to numerous evidence, including video footage, the police has been actively involved in forced evictions."

92. In February 2012 Human Rights Watch issued a detailed report concerning the recent and ongoing forced evictions and expropriations in

Baku which was entitled "They took everything from me – Forced Evictions, Unlawful Expropriations, and House Demolitions in Azerbaijan's Capital". The report was based on Human Rights Watch researchers' visits to Baku in June, September and December 2011 and in January 2012 during which sixty-seven interviews were carried out with property owners, lawyers and NGO representatives. The report's chapter entitled "Illegal Detention as a Component of Forced Eviction" contained the following observations concerning the events of 19 November 2010:

> "**Illegal Detention as a Component of Forced Eviction**
>
> Human Rights Watch documented three cases in which police detained homeowners and their families in a police station while government workers demolished the apartment buildings in which they lived. Among those detained were children ranging in ages from 12 to 15. In all cases the detentions took place in the neighbourhood behind the Heydar Aliyev Hall.
>
> In all instances police detained homeowners and their families without explanation, did not allow them access to legal counsel, and released them without charge hours later, in one case as long as eight hours. These detentions, in the course of aggressive police action to forcibly remove people from their homes, exacerbated an already harrowing and distressing experience for residents. Furthermore, the government's use of police to carry out the expropriation and facilitate the demolition implicates the police in the illegal actions of the Baku City Executive Authority and the State Committee on Property.
>
> ...
>
> **58 Fuzuli Street**
>
> On the morning of November 19, 2010, police and other officials surrounded an apartment building located at 58 Fuzuli Street in order to evict the eight families remaining in the building. Demolition on the building had begun in June 2010, and residents on the top (third) floor had already vacated their apartments, since the roof had been removed. Residents on the first and second floors, including Nuriya Khalikova, a 46-year-old librarian, continued living in the building. Khalikova received no official, written notification that the building would be demolished and no information about potential dates of demolition.
>
> Khalikova described to Human Rights Watch the forced eviction and illegal detention on November 19, 2010:
>
> I went out in the morning to buy bread. When I came back I saw that police surrounded the building. I ran back inside to my apartment. We had no warning that they would come that day. About 10 to 12 police broke down my door, and workmen entered the apartment and started moving out my furniture and belongings.
>
> My blood pressure went up, and I started to feel very bad, so I called an ambulance. When the ambulance arrived the police wouldn't let it enter our courtyard. Instead, the police took me out of my apartment. They put me in a police car and took me to the local police station no. 22. They had already brought my neighbours there. There were eight of us. Some people were still in their pajamas. They held us there all day, until about 7 p.m. They kept saying that they would let us go in half an hour, but they didn't.

Although police did not explain to Khalikova the reasons for her detention, it is clear they detained her and the other residents to prevent them from interfering with the demolition of the building. Police attempted to force the residents to sign a statement saying that they had been detained for participating in an illegal demonstration, which the property owners and other residents refused to do.

Khalikova told Human Rights Watch what she and her neighbours discovered upon returning to their building:

When they finally let us go, we went back to our building, but they had already started to demolish it and we could not go in. We saw huge machines hauling away our belongings. I went to the warehouse to collect my belongings; half of the things were broken and many things were missing, including my diamond earnings that I wore every day. Many valuable things were just gone."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

93. Relying on Articles 5 and 13 of the Convention, the applicant complained that on 19 November 2010 she had been unlawfully arrested, had been detained by the police without any legal basis, and that she had had no effective remedy in this respect. The Court considers that the present complaint falls to be examined solely under Article 5 of the Convention. The relevant part of Article 5 of the Convention reads:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition"

## A. Admissibility

94. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

95. The Government submitted that on 19 November 2010 the applicant and a group of people had been taken to the police station because they had failed to comply with the requirements of Article 5 of the Law on Freedom of Assembly. In particular, they had tried to hold a gathering without having informed the local executive authorities, protesting against the BCEA's order for their relocation prior to the construction of a garden-park complex in the area where they lived. According to the Government, the police had informed the protesters of the unlawfulness of their action and had ordered them to stop the gathering in accordance with Article 14 of the Law on Freedom of Assembly. However, as the applicant and other attendees had failed to comply with the lawful request by the police, they had been taken to the police station at around 11.10 a.m. and were released at 1.50 p.m. In support of their factual claim, the Government relied on a report of 19 November 2010 signed by three police officers, the record of an administrative offence of 19 November 2010, and the extract from the "registration log of materials relating to administrative offences" (see paragraphs 30-32 above). As regards the absence of a record of the applicant's arrest, the Government submitted that, as the applicant had not been detained in an administrative sense, the police did not draw up a corresponding record of detention.

96. The applicant maintained her complaint, reiterating that her arrest and detention by the police had been unlawful. She submitted that she had not participated in any gathering on 19 November 2010 and that she had been arrested by the police so that her forcible eviction from her flat could be effected. As regards the period of her detention, she submitted that she had been taken to the police station at 10 a.m. and had not been released until 7.10 p.m. In this connection, the applicant relied on the medical certificate of 19 November 2010, the witness statements from F.G. and L.A, and the video recordings. In particular, she submitted that she could not have been brought to the police station at 11.10 p.m. as alleged by the Government because the medical certificate confirmed that at 10.45 a.m. she was provided with medical assistance at the police station. In this connection she noted that a representative from the police station had also confirmed in the domestic proceedings that she had been provided with

medical assistance at the police station. The applicant further noted that her version of the events was confirmed by F.G. and L.A., who stated that she had been taken to the police station at 10 a.m. and that the residents of the area had been detained by the police so that their forcible eviction from their flat could be effected. The applicant pointed out that the video recordings filmed between 9.11 a.m. and 9.45 a.m. on 19 November 2010 also corroborated her factual claim.

*2. The Court's assessment*

**(a) General principles**

97. The Court reiterates that Article 5 enshrines a fundamental human right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty (see *Aksoy v. Turkey*, 18 December 1996, § 76, *Reports of Judgments and Decisions* 1996-VI). Article 5 § 1 sub-paragraphs (a) to (f) contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008-...).

98. The Court further notes that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer to national law and state the obligation to conform with the substantive and procedural rules thereof. While it is normally primarily for the national authorities, in particular the courts, to interpret and apply domestic law, the situation is different in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (see, among other authorities, *Douiyeb v. the Netherlands* [GC], no. 31464/96, §§ 44-45, 4 August 1999).

99. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. What is at stake here is not only the "right to liberty" but also the "right to security of person" (see, among other authorities, *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, and *Wassink v. the Netherlands*, 27 September 1990, § 24, Series A no. 185-A). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1, and the notion of "arbitrariness" in Article 5 § 1 extends beyond a lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi*, cited above, § 67).

100. The Court also reiterates that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees

contained in Article 5 of the Convention, and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention, and the name of the person effecting it, must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Kurt v. Turkey*, 25 May 1998, § 125, *Reports* 1998-III, and *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV).

**(b) Application of those principles to the present case**

101. The Court notes that it must first examine whether in the instant case there was a deprivation of liberty to which Article 5 applies. The Court reiterates that Article 5 of the Convention enshrines a fundamental right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. In proclaiming the "right to liberty", paragraph 1 of Article 5 envisages the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. In order to determine whether there has been a deprivation of liberty, the starting point must be the specific situation of the individual concerned, and account must be taken of a whole range of factors arising in a specific case, such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A no. 39, and *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 57, ECHR 2012).

102. The Court further points out that Article 5 § 1 may apply to deprivations of liberty of very short duration, where applicants are stopped for the purposes of a search for a period which does not exceed thirty minutes (see *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010 (extracts)) or where the length of time during which the applicant was held at a police station did not exceed forty-five minutes (see *Shimovolos v. Russia*, no. 30194/09, §§ 48-50, 21 June 2011). In the present case, it is undisputed that the applicant was taken to the police station by police officers and that she was not free to leave the premises without their authorisation. The Court thus considers that there was an element of coercion which was indicative of a deprivation of liberty within the meaning of Article 5 § 1 (see *Gillan and Quinton,* cited above, § 57, and *Foka v. Turkey*, no. 28940/95, §§ 74-79, 24 June 2008). In these circumstances the Court finds that the applicant was deprived of her liberty within the meaning of Article 5 § 1.

103. As to the exact length of time for which the applicant was deprived of her liberty, the Court observes that while the applicant maintained that she had been arrested by the police at 10 a.m. on 19 November 2010 and had not been authorised to leave the police station until 7.10 p.m. on

19 November 2010, the Government argued that she had been brought to the police station at 11.10 a.m. on 19 November 2010 and had been released at 1.50 p.m. on the same day.

104. The Court notes that the Government relied on the report of 19 November 2010 and the extract from the "registration log of materials relating to administrative offences" in support of their factual claim that the applicant had been taken to the police station at 11.10 a.m. on 19 November 2010 and released at 1.50 p.m. on the same day. However, the Court observes numerous shortcomings and inconsistencies in the documents submitted by the Government and, in general, in the way in which the applicant's deprivation of liberty was documented.

105. The Court observes at the outset that the Government were unable to produce any record of the applicant's arrest indicating the exact commencement of her deprivation of liberty on 19 November 2010, despite the clear requirements of domestic law in this respect (see paragraph 77 above). In this connection, the Court cannot accept the Government's argument that such a record was not compiled because the applicant was not arrested in an administrative sense, as the Court had already found that the applicant had been deprived of her liberty on 19 November 2010 (see paragraph 102 above). Moreover, the Government's argument was contradicted by the letter of 30 November 2010 from the Head of Nasimi District Police Station No. 22 who implicitly confirmed the applicant's administrative arrest, indicating that the applicant's detention at the police station had not exceeded the three-hour period provided for by law (see paragraph 34 above). In fact, this period of three hours corresponded precisely to the time limit for an administrative arrest under domestic law (see paragraph 77 above).

106. As regards the documents submitted by the Government, the Court notes that none of them could be considered to constitute a record of arrest containing such matters as the precise date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it, and other information concerning the applicant's detention. Moreover, these documents contain contradictory information concerning the exact time the detention commenced and the reason for it. In fact, while the report of 19 November 2010 stated that the applicant had been taken to the police station at around 11 a.m. for holding an unlawful demonstration, the extract from the "registration log of materials relating to administrative offences" stated that she had been taken to the police office at 11.10 a.m. for an attempt to hold an unlawful demonstration.

107. The Court further observes that in the domestic proceedings the applicant challenged the version of events submitted by the police, according to which she had been taken to the police station at 11 a.m. and released at 1.50 p.m. In particular, relying on the medical certificate of 19 November 2010, the applicant stated that she could not have been

provided with medical assistance at the police station at 10.45 a.m. if she had not been arrested until 11 a.m., as alleged by the police. However, the domestic courts never addressed this complaint (see paragraphs 37-40 above). In any event, the Court notes that the authenticity of the medical certificate of 19 November 2010 was not disputed either in the domestic proceedings or before the Court. In these circumstances, the Court does not see how the applicant could have been provided with medical assistance at the police station at 10.45 a.m. on 19 November if she was not taken to the police station until 11.10 a.m., as stated by the Government before the Court.

108. The applicant was also able to produce witness statements in support of her factual claim. In particular, F.G. and L.A. stated before the Nasimi District Court that the applicant had been taken to the police station at 10 a.m. and that they had not been released until approximately 8 p.m. (see paragraph 35). However, the domestic courts ignored their statements.

109. Accordingly, in view of the Government's inability to provide convincing and relevant evidence in support of their version of events and the consistent and plausible nature of the applicant's submissions and evidence, the Court accepts the applicant's version of events, concluding that she was in detention at the police station from 10 a.m. to 7.10 p.m. on 19 November 2010. Given these facts, the Court considers that the applicant was deprived of her liberty for approximately nine hours and ten minutes.

110. The Court must next ascertain whether the applicant's deprivation of liberty complied with the requirements of Article 5 § 1 and was free from arbitrariness. The Court observes in this respect that the Government did not submit which paragraph of Article 5 § 1 applied to the applicant's deprivation of liberty. They found it sufficient to observe that the applicant had been taken to the police station because she had failed to comply with a lawful request from the police to discontinue an unlawful demonstration.

111. The Court finds that the applicant's deprivation of liberty did not fall under sub-paragraphs (a), (c), (d), (e) and (f) of paragraph 1 of Article 5. As to the question whether her deprivation of liberty fell within the ambit of sub-paragraph (b) of Article 5 § 1, the Court notes that although the Government submitted before the Court that the applicant had been taken to the police station because she had failed to comply with the police request to discontinue an unlawful demonstration, the applicant maintained that she had never participated in any such demonstration.

112. In this connection, the Court firstly refers to its aforementioned finding that at 10 a.m. on 19 November 2010 the applicant was brought to the police station. Therefore, she could not have failed to comply with the police request at 11 a.m. on 19 November 2010. The Court further observes that the Government's factual claim is also contradicted by the video recordings submitted by the applicant. It is apparent from the video recordings that on the morning of 19 November 2010, when the police

entered the applicant's flat by breaking down the door, the applicant was in her flat and was not participating in any demonstration. Moreover, it is also apparent from the video recordings that at that moment the applicant felt unwell and called an ambulance for medical help. After the arrival of the ambulance she was taken out of the flat by the police officers in order to be provided with medical assistance. Given these circumstances, the Court does not see how an individual who needed urgent medical assistance could have participated in an unlawful demonstration, as alleged by the police.

113. The applicant's version of the events was also confirmed by the witness statements. In particular, F.G. and L.A. confirmed in their statements before the Nasimi District Court that the applicant and other residents had not participated in any demonstration.

114. In these circumstances, the Court considers that the Government's factual claim that the applicant had failed to comply with a police request to discontinue an unlawful demonstration should be rejected. The Court thus finds that no grounds have been made out which could bring the applicant's detention within any of the other sub-categories of Article 5 § 1.

115. It follows from all the above that the applicant's deprivation of liberty on 19 November 2010 by the police for approximately nine hours and ten minutes was unlawful and arbitrary. There has therefore been a violation of Article 5 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

116. The applicant complained that on 19 November 2010 the police had unlawfully entered her home and that her forced eviction from her flat by the police without any court order had been in breach of Article 8 of the Convention. Article 8 of the Convention reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

### A. Admissibility

117. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

118. The Government contested that argument. In particular, they submitted that the applicant had failed to submit any evidence in support of her factual claim that she had been evicted from her flat by the police. The Government further submitted that there had been no violation of Article 8 of the Convention, as the applicant had sold her flat to Rufan Kazimov.

119. The applicant maintained her complaint, submitting that on 19 November 2010 she had been evicted from her flat by police intervention without any court order. She submitted that the police intervention which resulted in her forced eviction had been in breach of domestic law and the Convention. As regards evidence in support of her factual claim, she relied on the video recordings and the witness statements. The applicant further submitted that the fact that the police had broken down her flat's door and had evicted her from it had never been contested by the relevant authorities in the domestic proceedings. She also disputed the Government's argument that there had been no violation because she had sold the flat to Rufan Kazimov, pointing out that she had been evicted from her flat long before the contract of sale was concluded.

### *2. The Court's assessment*

#### (a) Whether the flat in question was the applicant's "home" within the meaning of Article 8 of the Convention

120. The Court notes that it is undisputed that the applicant had been living in the flat in question until 19 November 2010, that her ownership rights had been duly registered by the competent State authorities, and her right to live there derived from her title to the property.

121. The Court therefore concludes that the flat in question was the applicant's home for the purposes of Article 8 of the Convention.

#### (b) Whether there was an interference by a public authority with the applicant's right to respect for her home

122. Having established that the flat in question was the applicant's home for the purposes of Article 8 of the Convention, the Court has to determine whether there was an interference with her right to respect for her home by a public authority.

123. The Government submitted that the applicant had failed to submit any evidence in support of her claim that on 19 November 2010 there had been a police intervention to facilitate the applicant's forced eviction from the flat. However, the Court finds that the applicant was able to produce reliable and sufficient evidence proving that on 19 November 2010 the police forcibly entered her flat in order to carry out a forced eviction.

124. In particular, the video recordings submitted by the applicant clearly show that uniformed police officers and employees of the BCEA entered the flat by breaking down the door in response to the applicant's refusal to open it. These video recordings further show that, under police supervision, the BCEA's employees removed the applicant's belongings and furniture from the flat (see paragraph 22 above). The Court points out in this respect that the authenticity of the video recordings was established by the domestic courts, which confirmed that they were filmed on the applicant's mobile phone camera between 9.11 a.m. and 9.45 a.m. on 19 November 2010 (see paragraph 37 above). The applicant's factual claim was also corroborated by witness statements (see paragraph 35 above).

125. The Court further notes that Human Rights Watch specifically referred to the applicant's case in its report of February 2012 concerning cases of forced eviction by the police in Baku (see paragraph 92 above).

126. The Court thus finds that the police intervention of 19 November 2010 which resulted in the applicant's eviction from her flat constituted an interference by a public authority with her right to respect for her home.

**(c) Whether the interference was justified**

127. In order to determine whether the interference was justified under paragraph 2 of Article 8, the Court must examine in turn whether it was "in accordance with the law", whether it had an aim that was legitimate under that paragraph and whether it was "necessary in a democratic society" for the aforesaid aim (see *Gillow v. the United Kingdom*, 24 November 1986, § 48, Series A no. 109).

128. The Court observes that Article 33 of the Constitution and Article 5 of the Housing Code established the right to the inviolability of the home, permitting eviction only on the grounds laid down in law or on the basis of a court order. The latter provision introduced an important procedural safeguard against arbitrary evictions and its wording permitted no exceptions (compare *Prokopovich v. Russia*, no. 58255/00, § 44, ECHR 2004-XI (extracts)). However, it is clear that in the present case there was no legal basis for the police intervention of 19 November 2010 and that the applicant's forced eviction from her flat was not based on a court decision or any other legal precept. In this connection, the Court considers it necessary to emphasise that the practice of forcibly evicting an individual from his or her home by the police force without any legal basis is not compatible with the rule of law in a democratic society respecting the fundamental rights and freedoms guaranteed under the Convention.

129. It follows that the interference in the present case cannot be considered to be "in accordance with the law", as required by Article 8 § 2 of the Convention. Having reached this conclusion, the Court is not required to determine whether the interference was "necessary in a democratic

society" for one of the aims enumerated in paragraph 2 of Article 8. There has accordingly been a violation of Article 8.

## III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

130. The applicant complained that the interference with her property had been unlawful and unjustified. Article 1 of Protocol No. 1 to the Convention reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

### A. Admissibility

131. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### *1. The parties' submissions*

132. The Government submitted that the applicant's flat had been demolished in accordance with the order of 24 September 2008 which provided for the construction of a new garden-park complex in the area where the flat was located within the framework of the General Development Plan of the City of Baku. The residents were to be compensated in the amount of AZN 1,500 per sq. m of their property. The Government further submitted that there had been a contract of sale between the applicant and Rufan Kazimov, who had assisted the BCEA on a contractual basis in agreeing purchase and sale agreements with the residents.

133. The applicant maintained that the demolition of her flat had been unlawful and had amounted to a violation of her property rights. In this connection, she submitted that the order of 24 September 2008 could not constitute a legal basis for an expropriation, because the BCEA had no authority to expropriate private property. She relied on the various provisions of the Constitution, the Civil Code and the Housing Code,

claiming that she had been unlawfully deprived of her property. The applicant also submitted that there had been no public interest justifying such an expropriation. She further noted that she had not received any compensation for her property before the demolition of her flat and that she had been obliged to sign a contract of sale with Rufan Kazimov three months after the demolition of the flat as she had had neither any accommodation nor the financial means to buy a new flat.

*2. The Court's assessment*

**Compliance with Article 1 of Protocol No. 1**

134. Article 1 of Protocol No. 1 contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and sets out the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that a State is entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not unconnected, however: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of possessions and are therefore to be construed in the light of the principle laid down in the first rule (see, for example, *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 48, 19 February 2009, and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 93, 25 October 2012).

135. In the present case, it is not disputed that there was an interference with the applicant's possessions, since her flat was demolished by the State. This interference amounted to a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1. To be compatible with Article 1 of Protocol No. 1, an expropriation measure must fulfil three conditions: it must be carried out "subject to the conditions provided for by law", which excludes any arbitrary action on the part of the national authorities, it must be "in the public interest", and it must strike a fair balance between the owner's rights and the interests of the community.

136. As to the first condition, the Court reiterates that Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph of that Article authorises the deprivation of possessions "subject to the conditions provided for by law". The law upon which the interference is based should be in accordance with the domestic law of the Contracting State, including the relevant provisions of the Constitution. Moreover, the rule of law, one of the fundamental principles of a democratic society, is a notion inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79

and 82, ECHR 2000-XII, and *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 81, ECHR 2005-VI).

137. Turning to the circumstances of the present case, the Court observes that the Government referred to the order of 24 September 2008 as a lawful basis for the demolition of the flat, while the applicant maintained that the aforementioned order could not constitute a lawful basis for such demolition because the BCEA was not entitled under domestic law to make decisions on expropriation.

138. In this connection, the Court observes at the outset that, although the Government relied on the order of 24 September 2008 as a lawful basis for the demolition of the applicant's flat, they failed to refer to any domestic legal provision expressly designating the BCEA as the authority – or one of the authorities – having the power to make decisions concerning the expropriation of privately owned property. Therefore, the Court cannot but conclude that the BCEA did not have the authority to expropriate private property and its order of 24 September 2008 could not be considered as a lawful basis for expropriating the applicant's property (see *Akhverdiyev v. Azerbaijan*, no. 76254/11, § 92, 29 January 2015).

139. The Court further reiterates its recent findings in the case of *Akhverdiyev v. Azerbaijan* that – despite the existence of domestic legal provisions designating the Cabinet of Ministers as the authority competent to decide on the expropriation and State purchase of private property and specifying the grounds and conditions on the basis of which expropriation was permissible, as well as requiring prior payment of monetary compensation for the market value of the expropriated or purchased property and the relocation expenses incurred – in the present case the expropriation of the applicant's property was not carried out in compliance with any of the above conditions specified by law (see *Akhverdiyev*, cited above, §§ 96-97). Moreover, the Court cannot overlook the fact that the applicant's flat was located in a building classified as an architectural monument and which enjoyed a special protection under domestic law (see paragraph 87 above). In these circumstances, the Court cannot but conclude that there was no lawful expropriation order issued by a competent State authority and that the interference with the applicant's possessions thus constitutes a *de facto* deprivation of possessions.

140. As regards the Government's argument that the applicant had sold her flat to Rufan Kazimov, the Court finds it irrelevant for the following reasons. Firstly, the contract of sale between the applicant and Rufan Kazimov was concluded on 27 January 2011, in other words more than two months after the demolition of the applicant's flat on 22 November 2010. Secondly, although Rufan Kazimov acted in his capacity as a natural person in that contract, it is clear from the order of 24 September 2008 that he was entrusted with this task by the BCEA and acted on behalf of the executive authorities. In any event, the Court reiterates that the acquiescence

or connivance of the authorities of a Contracting State in acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention (see *Cyprus v. Turkey* [GC], no. 25781/94, § 81, ECHR 2001-IV).

141. Accordingly, the Court finds that the expropriation of the applicant's property was not carried out in compliance with "conditions provided for by law". This conclusion makes it unnecessary to ascertain whether or not a fair balance was struck between the demands of the general interest of the community and the requirement of the protection of the individual's fundamental rights (see, for example, *Iatridis v. Greece* [GC], no. 31107/96, § 62, ECHR 1999-II).

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

## IV. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

143. The applicant complained under Article 6 of the Convention that the domestic courts had delivered unreasoned judgments by failing to verify the compliance of the interference with her property rights with the applicable domestic legislation. Article 6 § 1 provides:

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

The applicant complained under Article 13 of the Convention, in conjunction with the complaint under Article 1 of Protocol No. 1, that she had not been afforded a remedy providing effective protection against the violations of her rights. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

144. The Government contested the applicant's arguments submitting that the domestic proceedings had been fair and that they had constituted an effective domestic remedy.

145. The applicant reiterated her complaints.

146. The Court notes that these complaints are linked to the one examined above and must therefore likewise be declared admissible.

147. However, having regard to the finding relating to Article 1 of Protocol No. 1 to the Convention (see paragraphs 141-142 above), the Court considers that it is not necessary to examine also whether, in this case, there have been violations of Articles 6 and 13 of the Convention (see *Akhverdiyev*, cited above, § 105).

## V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

148. The applicant complained that the unlawful taking and demolition of her flat had amounted to ill-treatment under Article 3 of the Convention. She further complained that her forced eviction from her flat against her will had been in breach of her right to freedom of movement under Article 2 of Protocol No. 4 and had also amounted to a violation of Article 18 of the Convention.

149. In the light of all the evidential material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

150. Article 41 of the Convention provides:

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

### A. Damage

#### *1. Pecuniary damage*

151. The applicant claimed a total of AZN 210,000 in respect of pecuniary damage. In this connection, relying on an expert report from a private company delivered on 29 December 2010, she submitted that in 2010 the market price of her flat had been AZN 71,000 namely AZN 2,500 per sq. m. She also submitted that the price of flats situated in the area where her flat was located had increased by about 30-33% since 2010. She further claimed AZN 8,038 for her belongings that had been damaged or had disappeared during her eviction from the flat and estimated their current value as AZN 10,000.

152. The Government contested the claim, pointing out that the applicant had failed to submit any documentary evidence in support of her claims. They further submitted, relying on an expert report from a private company delivered on 3 September 2014, that the real price of a flat in the same area was AZN 1,450 per sq. m and, accordingly, the market value of the applicant's flat was AZN 41,325. In this connection, they noted that the applicant sold her flat for AZN 42,750.

153. The Court notes that it has already found in the present case that the applicant was unlawfully deprived of her property. In this connection, the

Court reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I). However, as in the instant case the applicant's flat was demolished in November 2010, it is not possible to proceed on the basis of the principle of *restitution in integrum* and the Court should therefore determine the amount of compensation for the applicant's deprivation of her property.

154. Having examined the documents submitted by the parties, the Court considers it appropriate to base its findings on the conclusions of the expert report submitted by the applicant, according to which the market value of the applicant's flat was AZN 71,000 in 2010. The Court notes in this respect that the latter report, unlike the report submitted to the Court by the Government was also submitted to the domestic courts and its relevance was never contested in the domestic proceedings.

155. As to the applicant's claim that the market value of the flat had increased by 30-33% since 2010, the Court observes that she failed to submit any evidence in support of this claim. Furthermore, the Court reiterates that in the case of a constructive expropriation the date to be taken into consideration in assessing the pecuniary damage should not be that on which the Court's judgment is delivered, but the date on which the applicant was deprived of her property (see *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, §§ 102-105, 22 December 2009). Accordingly, this part of the claim should be rejected.

156. As regards the part of the applicant's claim for the damage to and the disappearance of her belongings following her eviction from the flat, even assuming that there is a causal link between the damage claimed and the violations found, the Court observes that the applicant did not submit any evidence supporting this claim. For the above reasons, the Court rejects this part of the applicant's claim in respect of pecuniary damage.

157. In view of the above findings, and taking into account the facts that the applicant obtained AZN 42,750 on the basis of the contract of sale of 27 January 2011 and that the awarded amount should also take into consideration the effects of inflation, the Court awards the applicant the sum of EUR 45,000 under this head, plus any tax that may be chargeable on this amount.

*2. Non-pecuniary damage*

158. The applicant claimed AZN 100,000 in respect of non-pecuniary damage.

159. The Government contested the amount claimed as unsubstantiated and excessive.

160. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of a violation and that compensation should therefore be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 15,000 under this head, plus any tax that may be chargeable on this amount.

### B. Costs and expenses

161. The applicant claimed AZN 7,000 for the costs and expenses incurred before the domestic courts and the Court and AZN 200 for postal expenses.

162. The Government considered that the claim was unsubstantiated and was not supported by documentary evidence.

163. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicant was represented before the domestic courts and the Court and it is undisputed that the representative provided relevant documentation and observations, as requested by the Court. In these circumstances, the Court finds it appropriate to award the applicant EUR 2,500 in respect of costs and expenses (see *Rzakhanov v. Azerbaijan*, no. 4242/07, § 92, 4 July 2013, and *Novruz Ismayilov v. Azerbaijan*, no. 16794/05, § 100, 20 February 2014).

### C. Default interest

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

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 5, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 of the Convention;

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

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

5. *Holds* that there is no need to examine the complaints under Article 6 and 13 of the Convention;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:

(i) EUR 45,000 (forty-five thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

Done in English, and notified in writing on 22 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

András Sajó
President