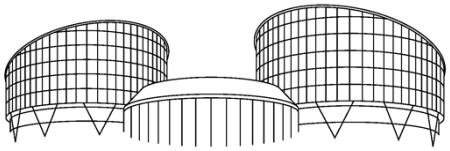

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ALIF AHMADOV AND OTHERS v. AZERBAIJAN

(Application no. 22619/14)

JUDGMENT

Art 8 • Home • Order by domestic courts, not yet enforced, for eviction of a family from their home and for its demolition on the ground that it was an unauthorised construction built of State-owned land assigned for oil and gas operations • No adequate possibility of review of the eviction's proportionality in the light of the applicants' personal circumstances • Enforcement of eviction order without such a review would entail a breach

STRASBOURG

4 May 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Alif Ahmadov and Others v. Azerbaijan,

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

Marko Bošnjak, *President*,
Péter Paczolay,
Alena Poláčková,
Lətif Hüseynov,
Ivana Jelić,
Erik Wennerström,
Raffaele Sabato, *judges*,
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 22619/14) 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 four Azerbaijani nationals ("the applicants" – as set out in the appended table), on 6 March 2014;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaints concerning Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 4 April 2023,

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

INTRODUCTION

1. The application concerns the planned demolition of a house where the applicants had lived for many years and their planned eviction from that house on the ground that it was an unauthorised construction built on a State-owned plot of land. It raises issues under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicants' details are set out in the appended table. The first two applicants are spouses while the third and fourth applicants are their adult children. The applicants were represented by Mr E. Abbasov, a lawyer based in Azerbaijan.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case may be summarised as follows.

5. By a decision of 31 January 1963, the Executive Committee of the Baku City Council of Workers' Deputies (the predecessor of the Baku City

Executive Authority ("the BCEA")) allocated a plot of land of 3.3 ha to the Leninneft Oil and Gas Extraction Department ("OGED").

6. The first applicant began working at Leninneft OGED in 1977; that subsequently became Balakhanineft OGED and formed part of Azneft Production Union ("Azneft"), a subsidiary of the State Oil Company of the Azerbaijan Republic ("SOCAR"). According to the first applicant, in the same year, he bought a house in Baku from E.L. However, there is no sale and purchase contract in respect of that house. According to the technical passport issued on an unspecified date in July 1963 by the Bureau of Technical Inventory of the Executive Committee of Baku City Council to E.L., the house was situated at no. 2 Stansiyayani cul-de-sac, house 4, was built in 1938 and had a habitable surface area of 49.9 sq. m and a yard of 267.7 sq. m. The relevant part of the technical passport "according to which document the house owner was considered the real user of the plot of land and the house" contained a note "no documents". It appears that in June 1981 and July 1982 plans of the house were added to the technical passport.

7. According to the first applicant, he had applied to his employer asking to be included in the list for housing in 1982 and 1992, but the applications were rejected following visits made by representatives of the local authority, who had concluded that the house in question was sufficient to meet their housing needs. It appears that oil workers were entitled, subject to certain conditions, to buy a flat under a scheme whereby SOCAR would pay a part of the cost of the flat to the cooperative carrying out the construction. According to the latest information available on SOCAR's official website, registration with the scheme was suspended in 2015. The first applicant has not provided copies of his applications for housing or any documents attesting to the visits made by the local authorities or their refusals.

8. It appears from the case file that the first applicant signed contracts with the relevant utility companies for the provision of water and gas to the house in question on 23 February and 6 June 2011 and 1 November 2017.

9. On an unspecified date in 2012 Azneft lodged a claim with the Sabunchu District Court against the applicants, seeking the demolition of the house at their expense. It argued that they had unlawfully built it on State-owned land allocated to Azneft and in the protection zone of an oil well, where it had been conducting oil and gas operations since at least 1963. It alleged that the construction of the house in question had interfered with its exploitation of the oil well.

10. On 25 January 2012, relying on, *inter alia*, Article 180 of the Civil Code and Article 111 of the Land Code (see paragraphs 23-24 below), the Sabunchu District Court allowed Azneft's claim. It also referred to a letter from the Sabunchu District Executive Authority dated 24 October 2011 which stated that the contested house was an unauthorised construction and that a technical passport had been issued in respect of it in 1963, and to a letter from the State Land and Cartography Committee dated 1 December

2011 which stated that the plot of land "used" by the applicants was State-owned land and had been assigned to the defendant's use. The court held that the plot of land in question was in Azneft's possession and that there was no evidence confirming the applicants' rights over the plot of land and the house built on it. The court therefore ordered the applicants' eviction from the house and its demolition at their expense.

11. On 29 February 2012 the applicants appealed, arguing that: (i) the house in question had been built in 1938; (ii) a technical passport had been issued in respect of it in 1963; (iii) the first applicant had bought the house from E.L. in 1977; (iv) the above-mentioned oil well had been dug in 1967, far away from their house, which was not an obstacle for the normal operation of the oil well; (v) as an employee of the Balakhanineft OGED the first applicant's applications for housing had been rejected on the ground that he already had the house in question; and (vi) they had no other place to live and they would end up on the street if the first-instance court's judgment were to be enforced. The applicants concluded by asking the appellate court to quash the first-instance court's judgment and to order their eviction by allocating them another living space.

12. On 25 April 2012 the head of the Sabunchu Settlement Representation (under the Sabunchu District Executive Authority) issued a certificate to the first applicant. The certificate stated that there were twelve persons in total registered at the five-room house situated at Stansiyayani street, house 4a (apart from the applicants: the spouses and children of the third and fourth applicants and the spouse and children of the first applicant's brother). The certificate also stated that the total surface area of the house was 88 sq. m, that it was an unauthorised construction and that the first applicant had been registered at the house since 1979, while the remaining applicants had been registered there since 1984. Similar certificates were issued to the first applicant on 28 June 2013 and 3 December 2014. According to the final certificate, the total surface of the house was 108 sq. m.

13. On 10 May 2012 the Baku Court of Appeal upheld the first-instance court's judgment (no copy of the appellate court's judgment has been made available to the Court).

14. The applicants appealed against the judgment to the Supreme Court, which on 27 November 2012 remitted the case to the appellate court (no copy of the judgment has been made available to the Court).

15. On 29 March 2013 an expert opinion concluded that the house in question was situated 45 meters away from the oil well and thus fell within the 75 meter-protection zone of the oil well.

16. On 19 April 2013 the Baku Court of Appeal, relying, *inter alia*, on the above-mentioned expert opinion, upheld the first-instance court's judgment. It found that the house in question had been built without any relevant authorisation or permit in contravention of the city's planning and construction rules. It further held that, since the house was situated within the

protection zone of the oil well, it posed a danger to "people's health and property" and hindered the normal operation and use of the oil well. The applicants were ordered to pay the cost of the expert opinion (100 Azerbaijani manats (AZN); approximately 98 euros (EUR) at the relevant time).

17. The applicants lodged a cassation appeal reiterating their previous arguments (see paragraph 11 above).

18. On 6 September 2013 the Supreme Court dismissed their cassation appeal reiterating the lower court's reasoning. It did not address the applicants' argument that, if evicted, they would end up on the street.

19. At the time of the latest communication with the parties in 2018, the house had not yet been demolished and the applicants continued to live there, and to date have not informed the Court of any steps taken to enforce the demolition or eviction orders.

RELEVANT LEGAL FRAMEWORK

20. The relevant provisions of domestic law have been summarised in *Ahmadova v. Azerbaijan* (no. 9437/12, §§ 12-22, 18 November 2021).

21. Article 230 of the 1963 Civil Code of the Azerbaijan SSR provided that sale and purchase contracts had to be approved by a notary and then registered by the executive committee of the local Soviet of people's deputies.

22. Article 178.6 of the 2000 Civil Code provides that if a person has possessed immovable property, not registered in the State register, continuously and without objection for thirty years, he or she can request to be registered as its owner. However, ownership can be registered in such a way only by a court decision and provided that no objection is lodged, or if an objection is lodged, if it is rejected within a specified period. In a decision of 31 May 2006, the Constitutional Court ruled, *inter alia*, that the legal effect of Article 178.6 of the Civil Code did not apply to periods before that Code came into force, that is 1 September 2000.

23. Article 180.1 of the 2000 Civil Code provides that a residential building, construction, facility or other immovable property erected on a plot of land not allocated for construction purposes or without obtaining the necessary permits or as a result of a serious breach of town-planning and building regulations is considered an unauthorised construction. Article 180.2 of the Code provides that the party that erected the unauthorised construction cannot acquire ownership rights to the construction in question and is not entitled to dispose of it by sale, deed of gift, lease or by any other means. Article 180.4 of the Code provides that an unauthorised construction can be demolished pursuant to a court order on the basis of requests by relevant executive bodies or other interested parties.

24. Article 111 of the 1999 Land Code prohibits squatting and provides that squatted land must be returned accordingly without payment of any compensation for expenses incurred during the unlawful use of the land.

Restoration of the land, including the demolition of any buildings erected on it, must be carried out by the legal or physical persons unlawfully occupying the land or at their expense.

25. Article 9 of the Law on Land Reform of 16 July 1996 provides that plots of land underlying private residential houses, as well as household plots which are being lawfully used by citizens, are transferred from State ownership into the occupants' private ownership free of charge under the procedure specified by law.

26. The list of documents confirming the acquisition of rights over immovable property obtained before the Law of the Republic of Azerbaijan on the State Register of Immovable Property came into force, approved by Presidential Decree no. 439 of 13 January 2015, includes passports regarding the inventory and evaluation of houses in private ownership issued by the Ministry of Communal Economy of the Azerbaijan SSR (point 1.11, added to the list on 11 July 2016). The decree specifies that those documents can serve as basis for the registration of immovable property if the property is not situated on plots of land in use for, *inter alia*, exploitation of oil and gas fields, at the time when the title to that property arises.

THE LAW

I. PRELIMINARY REMARKS

27. The Court notes that the second applicant, Ms Nazbika Ahmadova, died while the application was pending before the Court and that the remaining applicants have expressed their wish to continue the proceedings before the Court.

28. In various cases in which an applicant has died in the course of the Convention proceedings, the Court has taken into account the statements of the applicant's heirs or close family members expressing the wish to pursue the proceedings before the Court. The Court has accepted that in such cases the next of kin or heir of the deceased applicant may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Mammadov and Others v. Azerbaijan*, no. 35432/07, § 80, 21 February 2019, with further references). In view of the above and having regard to the circumstances of the present case, the Court accepts that the remaining applicants, who are the deceased applicant's spouse and children, have a legitimate interest in pursuing the application also in the late applicant's stead.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

29. The applicants complained that the demolition of the house, without any compensation and at their expense, would constitute a disproportionate interference with their rights under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

A. Scope of the complaint

30. In their observations submitted to the Court after notice of the application had been given to the Government, the applicants argued, referring to Article 9 of the Law on Land Reform (see paragraph 25 above), that the plot of land underlying the house also constituted their possessions.

31. However, the Court notes that in their complaints before the domestic courts and initial application to the Court, the applicants complained about a violation of their property right only in respect of the house, and never made any claims or complaints in respect of the underlying plot of land.

32. In view of the above and having regard to the fact that this issue was not part of the complaint of which the Government were given notice on 18 October 2017, the Court will limit its consideration to the applicants' initial complaint under Article 1 of Protocol No. 1, which concerned only the house in question (compare *Khizanishvili and Kandelaki v. Georgia*, no. 25601/12, § 42, 17 December 2019, and *Aliyeva and Others v. Azerbaijan*, nos. 66249/16 and 6 others, §§ 94-96, 21 September 2021).

B. Admissibility

1. The parties' submissions

33. The Government argued that the house in question did not constitute the applicants' possession. They noted that, in the absence of any certificate of title or a sale contract, the only documents presented by the applicants were the technical passport, issued to E.L. in 1963, and certificates issued by the local authority. The Government further submitted that, according to the technical passport, the house was situated at no. 2 Stansiyayani cul-de-sac, house 4 and had a total surface area of 49.9 sq. m, whereas according to the certificate issued by the local authority the applicants resided at Stansiyayani

street, house 4a in a five-room building with a total surface area of 88 sq. m. Based on that discrepancy, they argued that the documents referred to different buildings.

34. The applicants presented similar arguments to those submitted before the domestic courts (see paragraphs 11 and 17 above). In addition, the first applicant submitted that they had not built a new house but had renovated and enlarged the existing house. Therefore, the technical passport and the references issued by the local authority referred to the same house. Relying on Article 178.6 of the Civil Code, the applicants submitted that the domestic courts had failed to take into consideration the fact that the house had been there since 1938 and that the original construction and their subsequent possession of the house had not been challenged by the State authorities or SOCAR until 2012. Moreover, the applicants submitted that they had signed contracts with utility service companies and had regularly paid the amounts due. They furthermore argued that the technical passport issued in respect of the house was one of the grounds for registration of ownership rights under the Presidential Decree of 13 January 2015 (see paragraph 26 above) and that therefore the house of 108 sq. m constituted their possession.

2. The Court's assessment

35. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. The concept of "possessions" is not limited to "existing possessions" but may also cover assets, including claims, in respect of which the applicant can argue that he or she has at least a reasonable and "legitimate expectation" of obtaining effective enjoyment of a property right. An "expectation" is "legitimate" if it is based on either a legislative provision or a legal act which has a bearing on the property interest in question. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 124, ECHR 2004-XII; *Saghinadze and Others v. Georgia*, no. 18768/05, § 103, 27 May 2010; and *Keriman Tekin and Others v. Turkey,* no. 22035/10, § 41, 15 November 2016).

(a) The house in question

36. The Court notes that the house in question was declared an unauthorised construction by the domestic courts. It appears that under Azerbaijani law, unauthorised constructions cannot form the subject of property rights (contrast *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 68, 21 April 2016, and compare *Kotumanova v. Russia* (dec.), no. 57964/08, § 52, 11 September 2018).

37. According to the applicants, the house was bought from another individual. There are, however, no documents concerning the purchase of the house. Under the legislation in force at the relevant time, sale and purchase contracts in respect of immovable property had to be approved by a notary and then registered by the relevant authority (see paragraph 21 above). While the Government suggested that the applicants resided at a house other than the one mentioned in the technical passport, the Court firstly notes that that argument does not find support in the domestic courts' judgments. Moreover, having regard to the documents in its possession and the applicants' submissions, it appears that the above-mentioned documents concerned the same house with a slight modification of the address, and that the difference in size was due to the fact that the applicants had enlarged the house by the construction of additional rooms (see paragraph 34 above).

38. As to the applicants' argument that the house could not be regarded as an unauthorised construction because it had been built in 1938 by another person, the Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law. While it is not bound by the findings of domestic courts and remains free to make its own assessment in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 154, 22 October 2018, and *Cherkun v. Ukraine* (dec.), no. 59184/09, § 66, 12 March 2019). In the present case, the domestic courts established that the house in question had been built without any relevant authorisation or permit in contravention of the city's planning and construction rules and was situated within the protection zone of the oil well. They also found that the applicants did not provide any evidence confirming their rights over the house (see paragraphs 10 and 16 above). In such circumstances, and in the absence of any relevant documents showing the contrary, the Court finds no cogent elements which may lead it to question the conclusion reached by the domestic courts in that regard.

39. As to the applicants' submissions that under the relevant provisions of domestic law, they could obtain ownership rights in respect of the house, the Court notes the following.

40. With regard to the applicants' reference to the Presidential Decree of 13 January 2015, the Court firstly observes that the provision adding technical passports to the list of accepted documents was made in 2016, several years after the domestic court proceedings in the present case had ended. Moreover, the decree specified that the documents noted in the list could be grounds for the registration of immovable property in the State register provided that the property in question was not situated, *inter alia*, on plots of land in use for exploitation of oil and gas fields at the time when rights to that property arose. Most importantly, the technical passport referred to by the applicants had been issued in E.L.'s name. According to that passport, there were no

documents attesting to E.L.'s rights as the "real user" of the house (see paragraph 6 above). In any event, as already noted, the applicants failed to provide any documents proving the sale of the house to the first applicant or showing that they had acquired it through any other lawful transaction.

41. The Court further observes that under Article 178.6 of the Civil Code, a person who had possessed immovable property not registered in the State register, continuously and without any objection for thirty years, could request to be registered as the owner of that property. However, as is apparent from a ruling of the Constitutional Court (see paragraph 22 above), the relevant period only started running after 1 September 2000. In that light, the duration of the applicants' possession of the house in question does not meet the requirement under that Article. In addition, the relevant provision does not grant a right of ownership automatically, as the registration can be entered in the State register only by a court decision. The applicants have not argued or demonstrated that they had ever taken any steps to register their rights over the house in question. Therefore, they could not have had any legitimate expectation under the above-mentioned provisions of domestic law of having their ownership rights recognised over the house.

42. However, the Court reiterates that the fact that the domestic laws of a State do not recognise a particular interest as a "right" or even a "property right" does not necessarily prevent the interest in question, in some circumstances, from being regarded as a "possession" within the meaning of Article 1 of Protocol No. 1 (see, for example, *Brosset-Triboulet and Others v. France* [GC], no. 34078/02, § 71, 29 March 2010). The Court will thus examine next whether the circumstances of the case, considered as a whole, may be regarded as having conferred on the applicants title to a substantive interest protected by that provision (see paragraph 35 above).

43. It cannot be established that the applicants paid any taxes on the house in question (contrast *Öneryıldız*, cited above, § 105; *Valle Pierimpiè Società Agricola S.P.A. v. Italy*, no. 46154/11, § 49, 23 September 2014; *Elif Kızıl v. Turkey*, no. 4601/06, § 67, 24 March 2020; and compare *Barahona Guachamin and Others v. Italy* (dec.), no. 33295/15, § 67, 4 December 2018). As to the provision of utility services, the Court observes from the documents submitted by the applicants that the first contracts for provision of water and gas had been signed in 2011, approximately one year before the court proceedings were initiated against them. The Court further observes that there was no uncertainty concerning the application of Article 180 of the Civil Code and Article 111 of the Land Code (see paragraphs 23-24 above) which could have caused the applicants to believe that those provisions would not be applied in respect of the house in question (contrast *Öneryıldız*, cited above, § 128, and compare *Bagdonavicius and Others v. Russia*, no. 19841/06, § 117, 11 October 2016).

44. The Court notes that the absence of any reaction from the State authorities over a certain period of time should not have been understood by

the applicants as meaning that proceedings for the demolition of the house could not be brought against them (compare *Hamer v. Belgium*, no. 21861/03, § 85, ECHR 2007-V (extracts)). Finally, the duration of the possession of the house alone is not enough to lead to the conclusion that the applicants' proprietary interest in the house was sufficiently established and weighty as to amount to a "possession" within the meaning of the rule expressed in the first sentence of Article 1 of Protocol No. 1 (see *Bagdonavicius and Others*, §§ 117-18, and *Barahona Guachamin and Others*, §§ 67-68, both cited above).

45. The Court notes that even though it appears from the case file that the applicants had renovated and enlarged the house after its purchase, that fact alone cannot alter the above conclusion for the following reasons. The Court observes that while the original size of the house was 49,9 sq. m, the applicants had carried out some construction work as a result of which the total surface became 108 sq. m according to the latest certificate issued by the local authority (see paragraph 12 above). The applicants did not have a construction permit or any authorisation to carry out those construction works (contrast *Kosmas and Others v. Greece*, no. 20086/13, § 70, 29 June 2017). The applicants, who were not the legal owners of the house, should have known that by making improvements to it they were investing in immovable property that did not belong to them. In addition, the applicants have not argued that the demolition order would be executed in a manner endangering their movable personal effects.

46. It follows that this part of the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

(b) The obligation to pay for the demolition

47. The Court observes that the applicants were ordered to demolish the house in question at their own expense. While it appears that the house had not yet been demolished to date (see paragraph 19 above), the demolition order was upheld by a final court decision and became enforceable. Therefore, such an obligation imposed on the applicants constituted an interference with their property rights (compare *Agapov v. Russia*, no. 52464/15, § 49, 6 October 2020). Article 1 of Protocol No. 1 is therefore applicable in respect of that part of the demolition order. However, the applicants have not substantiated this part of the complaint with arguments demonstrating that there was an issue of lawfulness or proportionality of the said interference. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention (see *Ahmadova*, cited above, § 36).

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

48. The applicants also complained that eviction from the house where they had lived for many years would breach their right to respect for their home, as provided for in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for ... his home ...
>
> 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

49. The Government argued that this complaint was inadmissible for failure to exhaust domestic remedies as the applicants had not cited Article 8 of the Convention in their submissions before the domestic courts.

50. The applicants disagreed.

51. The Court observes that in their appeals before the domestic courts the applicants did not expressly rely on Article 8 of the Convention. However, it reiterates that Article 35 § 1 requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body "at least in substance". This means that if the applicant has not relied on the provisions of the Convention, he or she must have raised arguments to the same or like effect on the basis of domestic law, in order to have given the national courts the opportunity to redress the alleged breach in the first place. It is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, he or she must actually complain (expressly or in substance) of it in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (see *Farzaliyev v. Azerbaijan*, no. 29620/07, § 55, 28 May 2020, with further references).

52. In the present case, the applicants submitted before the domestic courts that the house in question was their only home and that they would end up on the street if evicted (see paragraphs 11 and 17 above). The Court therefore finds that the applicants have raised the complaint in substance before the domestic courts and have exhausted the domestic remedies. It therefore dismisses the Government's objection.

53. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

54. The applicants argued that the interference with their rights was arbitrary and not in accordance with law. They contested the Government's submission concerning the legitimate aim (see paragraph 55 below), alleging that there were other residential premises in the surroundings of the house in question. They also argued that the fair balance between the general interests of the community and the requirements of the protection of an individual's rights had not been respected in their case.

55. The Government agreed that the eviction order, if enforced, would constitute an interference with the applicants' right to respect for their home. They submitted that the eviction order had been based on Article 180.4 of the Civil Code (see paragraph 23 above) and was therefore lawful; it pursued the aim of the protection of public safety and economic well-being of the country, as the house in question was situated within the security zone of the oil well, and was proportionate to the legitimate aims pursued.

2. The Court's assessment

56. The relevant principles are summarised in *Ahmadova* (cited above, §§ 41 and 46).

57. It appears from the case file that the applicants were registered at the house in question in 1979 (the first applicant) and 1984 (the remaining applicants) and have lived there ever since. Therefore, the house was their home within the meaning of Article 8 of the Convention.

58. By the date of the latest information provided to the Court, the applicants had not yet been evicted (see paragraph 19 above). Furthermore, the applicants, whose duty it is to keep the Court informed of any relevant developments, have not claimed to date that the eviction order had been enforced after 2018. Therefore, the Court will examine the case on the understanding that the said order has not yet been enforced. This notwithstanding, the eviction order was upheld by a final court decision and became enforceable (see paragraph 18 above), and it does not appear that the applicants had any further legal recourse against it. Accordingly, the Court has no reason to doubt that there has been an interference with the applicants' right to respect for their home.

59. The applicants' eviction from the house in question was ordered by the domestic courts under the legal provisions regulating unauthorised constructions and the return of squatted land to the owners or lawful users. The national courts relied, *inter alia,* on Article 180 of the Civil Code and Article 111 of the Land Code. The Court is thus satisfied that the national courts' decisions ordering the applicants' eviction were in accordance with domestic law. The Court further notes that, having regard to the domestic

courts' conclusions that the house in question was an unauthorised construction built in contravention of the construction norms and was situated within the protection zone of an oil well, it can be accepted that the interference pursued the legitimate aim of protecting public safety, as well as the protection of the rights and freedoms of others. In view of this conclusion, it does not find it necessary to decide whether the interference in question also pursued the legitimate aim of protecting the economic well-being of the country as argued by the Government.

60**.** It therefore remains to be determined whether the interference was proportionate to the aim pursued and thus "necessary in a democratic society".

61. The Court observes that in the present case, while ordering the demolition of the house and the applicants' eviction, the domestic courts focused exclusively on the fact that it was an unauthorised construction built on State-owned land (compare *Bagdonavicius and Others*, cited above, § 102). Even though the applicants argued in their appeals that the house in question was their only home and that they would end up on the street if they were to be evicted, the domestic courts entirely ignored this point and failed to weigh up the competing interests (contrast *Belchikova v. Russia* (dec.), no. 2408/06, 25 March 2010, and *Kaminskas v. Lithuania*, no. 44817/18, § 64, 4 August 2020).

62. The Government have not argued that the applicants could have obtained a proper examination of the proportionality of their eviction by using other remedies under domestic law nor claimed that there had been a procedure to consider whether alternative housing was available to them (see *Ahmadova,* cited above, §§ 50-51).

63. In such circumstances, the applicants were not afforded a procedure enabling them to obtain an adequate review of the proportionality of the interference, that is, their eviction from the house in question, in the light of their personal circumstances.

64. The Court therefore finds that there would be a breach of Article 8 of the Convention if the eviction order were to be enforced without carrying out such a review.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

65. The applicants argued that the most appropriate form of individual redress would be to reverse the eviction and demolition orders.

66. The Government did not make any submissions in that respect.

67. The Court reiterates that, by virtue of Article 46 of the Convention, the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, with execution being supervised by the Committee of Ministers of the Council of Europe. In the present case, having regard to the nature of the issues involved, the

Committee of Ministers is better placed than the Court to assess the specific measures to be taken. It should thus be left to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State and with due regard to the applicants' evolving situation, the adoption of measures aimed at ensuring that the domestic authorities comply with the Convention requirements, as clarified in the present judgment.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicants claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

70. The Government submitted that as the house in question had not yet been demolished, a finding of a violation would constitute sufficient reparation for the applicants.

71. In the present case, an award of compensation can only be made on the basis of a breach of Article 8 of the Convention since that breach will only actually occur if the decision ordering the applicants' eviction is enforced. As noted above, the applicants have not informed the Court of any developments since 2018 and at that time the eviction order had not been enforced (see paragraphs 19 and 58 above). The finding of a violation is therefore sufficient just satisfaction for any non-pecuniary damage suffered by the applicants (see *Yordanova and Others v. Bulgaria*, no. 25446/06, § 171, 24 April 2012, and *Ivanova and Cherkezov,* cited above, § 85).

B. Costs and expenses

72. The applicants also claimed EUR 768 in respect of costs and expenses which consisted of fees for legal services before the domestic courts and the Court and the cost of the expert opinion, which they had paid following the appellate court's judgment of 19 April 2013 (see paragraph 16 above). They submitted a copy of a contract for legal services with Mr E. Abbasov, an invoice from him and two invoices from another lawyer for legal services provided in the domestic courts. They also submitted a copy of the receipt of payment in respect of the expert opinion.

73. The Government asked the Court to dismiss the claims under this head.

74. 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 were actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicants' complaint under Article 1 of Protocol No. 1 was declared inadmissible (see paragraphs 44-47 above). It therefore rejects part of the claim in respect of the cost of the expert opinion. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 630 covering costs under all heads, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by six votes to one, that there would be a violation of Article 8 of the Convention if the eviction order were to be enforced without carrying out an adequate review of its proportionality in the light of the applicants' personal circumstances;

3. *Holds*, unanimously, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

4. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 630 (six hundred and thirty euros), plus any tax that may be chargeable to them, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Marko Bošnjak President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Sabato is annexed to this judgment.

M.B.
R.D.

PARTLY DISSENTING OPINION OF JUDGE SABATO

1. I voted against points 2 and 4 of the operative part of the judgment.

2. In my opinion – and contrary to the finding of the majority in paragraph 63 of the judgment (according to which "the applicants were not afforded a procedure enabling them to obtain an adequate review of the proportionality of the interference") – the applicants were able to submit to the domestic judiciary (at least before the Court of Appeal; see paragraph 11 of the judgment) the circumstances that "they had no other place to live and they would end up on the street", as well as their claim that they needed to be allocated "another living space".

3. The challenges brought by the applicants against the interference in question were also reviewed *in concreto*. Indeed, the Court of Appeal, after the remittal of the case, reviewed the proportionality of the measures by holding that they were inevitable because "the house ... had been built without any relevant authorisation" and in contravention, among other rules, of "construction rules", and posed "a danger to people's health and property" since it was "situated within the protection zone of [an] oil well" (see paragraph 16 of the judgment).

4. The majority recognised that the above reasoning by the domestic courts attested to the fact "that the interference pursued the legitimate aim of protecting public safety [and] the rights and freedoms of others" (see paragraph 59 of the judgment). They failed, however, to consider that the identification of the "precise nature of the interest sought to be protected by the demolition" (closely linked to the legitimate aim) – combined with the findings that "the home was established unlawfully", "the persons concerned did so knowingly", and "the illegality at issue" was of a serious "nature and degree" – also demonstrated the proportionality of the order, as evidently no "less severe" measures could be envisaged in order to counter the risks identified (the quotations are from *Ivanova and Cherkezov v. Bulgaria*, no. 46577/15, § 53, 21 April 2016, in which the factors to be assessed are summarised in a non-exhaustive manner, together with the Court's precedents; a dissenting opinion of Judge Vehabović covering the scope of Article 8 in this context is appended to that judgment).

5. Moreover, while according to the Court's case-law any person risking the loss of his or her home for the promotion of a public interest – whether or not he or she belongs to a vulnerable group – should in principle be able to have the proportionality of the measure determined by an independent tribunal (as I consider has happened in the case at hand), the assessment as to whether suitable alternative accommodation is available is just one additional factor to be considered as part of the above proportionality assessment (see *Ivanova and Cherkezov*, cited above, § 53). In this context, it should not be made a requirement that alternative accommodation must in all instances be

provided by the State, especially if – as in the present case – the eviction or demolition is not enforced immediately and the persons concerned are given the time to find another dwelling (contrast *Ivanova and Cherkezov*, cited above, § 59, where enforcement took place within less than a month). An obligation for the State to provide alternative housing, for a given time, can be envisaged only in order to protect vulnerable persons, a group to which the applicants did not claim to belong. Therefore, any need for the domestic courts to specifically assess the availability of alternative accommodation, once they have identified a relevant danger in the situation, can be excluded.

6. The proceedings before the national courts therefore had regard, explicitly or implicitly, to all relevant factors, and weighed the competing interests in line with the Court's principles: that being so, the margin of appreciation allowed to those courts is a wide one, in recognition of the fact that they are better placed than an international court to evaluate local needs and conditions, and the Court will be reluctant to gainsay their assessment (ibid., § 53).

7. In this connection, the Court's case-law is sufficiently clear to enable it to deal with cases similar to the one at hand (and the country-specific precedent of *Ahmadova v. Azerbaijan* (no. 9437/12, 18 November 2021) is open to the same criticism that I am respectfully expressing with regard to the majority's judgment in the present case). Action taken by States aimed at preventing hazards by removing unsafe buildings reinforces human rights rather than violating them. Images of collapsed structures around the world and the consequent loss of life are a reminder to the Court, should that be necessary, of the important responsibility it has to clarify its case-law. The majority's judgment is thus a lost opportunity.

APPENDIX

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Alif AHMADOV	1956	Azerbaijani	Baku
2.	Nazbika AHMADOVA	1958 Deceased 2016	Azerbaijani	Baku
3.	Ruslan AHMADOV	1978	Azerbaijani	Baku
4.	Ibrahim AHMADOV	1982	Azerbaijani	Baku