



Complaints by Armenian refugee, displaced during the Nagorno-Karabakh conflict, admissible

In its decision in the case of [Sargsyan v. Azerbaijan \(application no. 40167/06\)](#) the European Court of Human Rights, sitting as a Grand Chamber, has by a majority declared the application **partly admissible**.

The case concerns an Armenian refugee's complaint that he was forced to flee from his home in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh.

The Court's admissibility decision in no way prejudices the merits of the applicant's complaints. The Court will deliver its judgment at a later date.

Principal facts

The applicant, Minas Sargsyan, an Armenian national, was born in 1929 and died in 2009 in Yerevan. His widow and three children are pursuing the application on his behalf.

The case concerns Mr Sargsyan's complaint that he was forced to flee from his home in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh ("the NKAO")¹, which, at the moment of the dissolution of the Soviet Union in December 1991, was an autonomous province landlocked within the Azerbaijan Soviet Socialist Republic ("the Azerbaijan SSR"). In 1989 the NKAO was approximately 75% ethnic Armenian and 25% ethnic Azeri.

Armed hostilities in Nagorno-Karabakh started in 1988, coinciding with Armenian demand for the incorporation of the NKAO into Armenia. In September 1991 the Soviet ("Council") of the NKAO announced the establishment of the "Nagorno-Karabakh Republic" ("NKR"), consisting of the territory of the NKAO and the Shahumyan district of Azerbaijan. The "NKR" reaffirmed its independence from Azerbaijan in January 1992. After that, the conflict gradually escalated into full-scale war. By the end of 1993, ethnic Armenian forces gained control over almost the entire territory of the former NKAO as well as seven adjacent Azerbaijani regions. The conflict resulted in hundreds of thousands of internally-displaced people and refugees on both sides. In May 1994 the parties to the conflict signed a cease-fire agreement, which holds to this day. However, no final political settlement of the conflict has been reached. The self-proclaimed independence of "NKR" has not been recognised by any state or international organisation.

Mr Sargsyan states that he and his family, ethnic Armenians, lived in a two-floor house with auxiliary premises in the village of Gulistan of the Shahumyan region (the Azerbaijan SSR). Shahumyan shared part of NKAO's northern border. The region did not form part of NKAO, but was later claimed by "NKR" as part of its territory. According to the applicant, prior to the conflict, 82% of the population of Shahumyan were ethnic Armenians. When the Nagorno-Karabakh conflict escalated into full-scale war in 1992, Gulistan was bombed by Azerbaijani forces and the entire population of the village, including the applicant and his family, fled, fearing for their lives.

¹ The Nagorno-Karabakh Autonomous Oblast.

Complaints, procedure and composition of the Court

The applicant complained about his forced displacement from Gulistan and continuing refusal by the Azerbaijani Government to allow him access to his property and home. He relied on Article 1 of Protocol No. 1 (protection of property) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights. He also complained under Article 13 (right to an effective remedy) of the Convention, in conjunction with his other complaints, that there were no effective remedies available to ethnic Armenians who were forced to leave their homes in Azerbaijan due to the unresolved status of the Nagorno-Karabakh conflict.

Further relying in particular on Article 8, he complained about the reports of alleged demolition or vandalism of Armenian cemeteries in Azerbaijan. He submitted that not being able to visit the graves of his close relatives and not knowing what had happened to them – but being aware that they were at risk of destruction – caused him severe suffering and distress, visiting and maintenance of cemeteries being one of his religious customs.

Lastly, he submitted under Article 14 (prohibition of discrimination), in conjunction with his other complaints, that only ethnic Armenians living in Azerbaijan were the target of violence and that the Azerbaijani Government failed to investigate such attacks against Armenians or to provide redress for illegal occupation of their properties as well as destruction of Armenian cemeteries.

The application was lodged with the European Court of Human Rights on 11 August 2006. On 11 March 2010 the Chamber to which the case was assigned relinquished jurisdiction in favour of the Grand Chamber. The Armenian Government intervened as a third party.

A hearing was held in public at the Court in Strasbourg on 15 September 2010.

The decision was given by the Grand Chamber of 17, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Jean-Paul **Costa** (France),
Christos **Rozakis** (Greece),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Nina **Vajić** (Croatia),
Corneliu **Bîrsan** (Romania),
Peer **Lorenzen** (Denmark),
Boštjan M. **Zupančič** (Slovenia),
Elisabet **Fura** (Sweden),
Alvina **Gyulumyan** (Armenia),
Khanlar **Hajiyev** (Azerbaijan),
Egbert **Myjer** (the Netherlands),
Sverre Erik **Jebens** (Norway),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus),
Luis **López Guerra** (Spain), *Judges*,

and also Michael **O'Boyle**, *Deputy Registrar*.

Decision of the Court

Admissibility

Right of the applicant's relatives to pursue the application after his death

The Court found that Mr Sargsyan's widow and children were entitled to pursue the application which he had brought before the Court.

Territorial jurisdiction and responsibility of Azerbaijan

The Court noted that Azerbaijan had ratified the Convention with effect throughout its territory. However, it had made a declaration at the time of ratifying the Convention to the effect that it was unable to guarantee the application of the Convention in the territories occupied by the Republic of Armenia.

The Court found that the declaration was not capable of restricting the territorial application of the Convention to only certain parts of Azerbaijan's internationally-recognised territory. In addition, it examined whether that declaration could be considered a reservation. It then noted that the Convention did not allow "reservations of a general character", namely those that did not refer to a specific Convention provision or were worded in a way that their scope could not be defined. Consequently, the declaration was invalid, as it could not be considered a reservation complying with the Convention requirements.

The Court therefore dismissed the Government's objection as far as it was based on the declaration.

The Court also noted that it was in dispute between the parties whether the Government of Azerbaijan had effective control over the area concerned. The Government contested this and argued that, consequently, their responsibility under Article 1 of the Convention was not engaged. The applicant and the Armenian Government, intervening as a third party, asserted that Gulistan was under the effective control of Azerbaijan.

The Court joined the Government's objection that it lacked jurisdiction and did not have responsibility under Article 1 of the Convention to its examination of the merits of the case, as it found that it did not have sufficient information to be able to decide on that question at the admissibility stage.

Temporal jurisdiction

While the parties differed as to the reasons which had been preventing Mr Sargsyan from returning to the village of Gulistan, they had not disputed that he had not had access to his alleged property and home since he had fled in June 1992.

The Court noted that Mr Sargsyan's displacement in 1992 had been an instantaneous act which happened before 15 April 2002, when Azerbaijan ratified the Convention and, therefore, fell outside of the Court's temporal competence. However, his subsequent lack of access to his alleged property, home and graves of his relatives had to be considered a continuing situation which the Court was competent to examine as from 15 April 2002.

The Court dismissed the Government's objection that the application fell outside the Court's temporal jurisdiction.

Victim status as regards the alleged destruction of Armenian graves

The Court found that Mr Sargsyan could not claim to be a victim in respect of the alleged general situation of destruction of Armenian graves in Azerbaijan. The reason was that he had to be directly affected by an action or inaction to be able to claim to be a victim of an alleged Convention violation.

The Court joined the Government's objection that Mr Sargsyan lacked victim status in respect of the alleged continued lack of access to the graves of his relatives in Gulistan to its examination of the merits of the case.

Exhaustion of domestic remedies

The Azerbaijani Government claimed that effective remedies existed and that the applicant should have exhausted them before applying to the Court. Mr Sargsyan and the Government of Armenia disputed this and argued that, as there was a general administrative practice showing the Azerbaijani Government's unwillingness to protect abandoned property of ethnic Armenians or to provide compensation for it, it was impossible to use any remedies.

The Court found that the above issues were closely related to the merits and therefore joined the Government's objection of non-exhaustion of domestic remedies to the examination of the merits of the complaint.

Compliance with the six-month rule

The Court reiterated its case-law concerning the application of the six-month rule in respect of continuing situations. It noted that it had qualified its previous case-law in disappearance cases by imposing a duty of diligence and initiative on applicants. Notwithstanding important differences between cases concerning the continued failure to investigate disappearances and cases like today's case, concerning continuing denial of access to property and home, the Court found that general considerations of legal certainty were of relevance in both. It also had regard to the particular features of cases concerning complaints about continuing violations in a complex post-conflict situation. It therefore found in the context of today's case that, once an applicant had become aware that there was no realistic hope of regaining access to their property and home in the foreseeable future, unexplained or excessive delay in lodging the application might lead to rejection of the application as out-of-time. There were no specific time-frames which could be applied.

Azerbaijan ratified the Convention on 15 April 2002. Therefore, that had been the earliest time when Mr Sargsyan could have applied to the Court. He had complained more than 14 years after his forced displacement and more than 12 years after the cease-fire agreement between Armenia and Azerbaijan.

When joining the Council of Europe and ratifying the Convention, both Armenia and Azerbaijan had made a joint undertaking to seek a peaceful settlement of the Nagorno-Karabach conflict. A period of intensified negotiation had followed. Mr Sargsyan could for some time have reasonably expected that a solution to the conflict would be found. In the circumstances, the Court concluded that by applying to the Court on 11 August 2006, that was four years and almost four months after Azerbaijan had ratified the Convention, Mr Sargsyan had acted without undue delay.

Consequently, the Court dismissed the Government's objection that the applicant's complaints about his continued lack of access to his property and home and to his relatives' graves had been submitted out of time.

Alleged violations of the Convention

The Court found that Mr Sargsyan's complaints related to the alleged breaches of his rights to property and private and family life, to an effective remedy and not to be discriminated against, raised serious issues of facts and law under the Convention, and therefore required an examination on the merits.

Conclusion

The Court declared inadmissible the applicant's complaint concerning the alleged destruction of Armenian graves in Azerbaijan in general. It declared admissible the remainder of the applicant's complaints without prejudging the merits of the case.

The decision is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.