***Sargsyan v Azerbaijan* App No. 40167/06**

Admissibility decision by Grand Chamber

The case concerns the complaint of an Armenian refugee that he was forced to flee from his home in 1992 during the Armenian – Azerbaijani conflict over Nagorno-Karabakh (the NKAO), and has not been able to return since.

FACTS

The applicant Minas Sargsyan, an Armenian national, died in 2009 in Erevan, Armenia, and his widow and three children are pursuing the application on his behalf.

Until 1992, Mr Sargsyan lived with his family in a two storey house in Gulistan, in the Shahumyan district of Azerbaijan, which prior to the conflict was 82% ethnic Armenian, according to the applicant. This district bordered the NKAO, which at the moment of the dissolution of the Soviet Union in 1991, was an autonomous landlocked province within the Azerbaijan Soviet Socialist Republic (the Azerbaijan SSR). The NKAO (in 1989) was approximately 75% ethnic Armenian and 25% ethnic Azeri. Armed hostilities in Nagorno-Karabakh began in 1988, coinciding with the Armenian demand for the NKAO to be incorporated into Armenia. On 2 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 also the Shahumyan district of Azerbaijan, where the applicant lived. On 26 November 1991 the Azerbaijani Government abolished the autonomy previously held by NKAO. The NKR reaffirmed its independence from Azerbaijan in 1992 and the conflict escalated into a full scale war. The conflict resulted in hundreds of thousands of internally displaced people and refugees on both sides. In May 1994 the parties signed a cease-fire agreement, which still holds, however no final political settlement has been reached. The self-proclaimed independence of the 'NKR' has not been recognised by any state or international organisation.

Mr Sargsyan stated that when the conflict escalated 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.

COMPLAINTS:

The applicant complained about his forced displacement from Gulistan and the continuing refusal by the Azerbaijani Government to allow him access to his property and home, relying on Article 1 of Protocol 1 (protection of property) and Article 8 (respect for family and private life). He also complained under Article 13 (right to an effective remedy) 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 again on Article 8 he complained of reports of alleged demolition/vandalism of Armenian cemeteries in Azerbaijan. He submitted that not being able to visit the graves of his close relatives and the knowledge they were at risk of destruction caused him suffering and distress, the visiting and maintenance of cemeteries being one of his religious customs. Lastly he submitted a complaint under Article 14 (non-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 the illegal occupation of their properties and destruction of their cemeteries.

The Chamber to which the case had been assigned relinquished jurisdiction in favour of the Grand Chamber. The Armenian Government intervened as a third party.

ADMISSIBILITY

Territorial jurisdiction and the responsibility of Azerbaijan:

The Respondent Government argued that, although it had ratified the Convention in 2002 with effect throughout its territory, it had made a declaration at this time 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 held that the declaration was invalid since it was not capable of restricting the territorial application of the Convention to only certain parts of Azerbaijan's internationally recognised territory. Further the Court held that the declaration could not be considered a reservation because it did not comply with the Convention requirements: the Convention does not allow 'reservations of a general character', namely those that did not relate to a specific provision or were worded in a way that their scope could not be defined. The Court therefore dismissed the Governments objection on this basis.
There was also a jurisdictional issue of Azerbiajan's effective control over the area concerned. The Government contested this stating that Gulistan was a heavily mined area with no safe access and therefore Azerbaijan had no access to or control over the village. Consequently their responsibility under Article 1 of the Convention was not engaged. The applicant and the Armenian Government asserted that Gulistan was under the effective control of Azerbaijan, and in any event Azerbaijan's responsibility was engaged as a result of its positive obligations under the Convention. The Court found that it did not have sufficient information to decide on this question at the admissibility stage and so joined the Government's objection that it lacked jurisdiction and therefore responsibility under Article 1 to the examination of the merits of the case.

Temporal Jurisdiction:
The parties, while disputing the reasons did not dispute that the applicant had not had access to his alleged property and home since he fled in 1992. The Court noted that his displacement had been an instantaneous act in 1992, occurring before Azerbaijan ratified the Convention (April 2002) and therefore fell outside the Court's temporal competence. However, the Court held that his subsequent lack of access to his home and property and graves of his relatives was a continuing situation, which the Court was competent to examine from 2002 onwards.

Victim status regarding the destruction of graves:
The Court held that the applicant could not be a 'victim' in respect of the general situation of destruction of Armenian graves in Azerbaijan, since he had to be directly affected by an action or inaction to be able to claim this, and therefore dismissed this part of the applicants case. The Court joined the Government's objection about his lack of victim status about the continued lack of access to the graves of his relatives in Gulistan to the merits of the case.

Exhaustion of domestic remedies:
The Azerbaijani Government claimed that effective remedies existed and the applicant had not exhausted them. The applicant and the Armenian Gvt disputed this and argued that as there was a general administrative practice showing the Governments unwillingness to protect abandoned property of ethnic Armenians or to provide compensation, it was impossible to use any remedies. The Court found the issue was closely connected to the merits and therefore joined the Government's objection to the examination of the merits.

Time-limit:
The Court reiterated its case law concerning the application of the 6 month rule in respect of continuing situations. It noted that it has qualified its previous case-law in disappearance cases by imposing a duty of diligence and initiative on applicants. Despite differences in cases of continued failure to investigate disappearances and on-going denial of access to property, the court found general considerations of legal certainty were relevant in both. It also had regard to the particular features of cases concerning continuing violations in a complex post-conflict situation where solutions depended upon political negotiations and the link between the progress of which and the applicant's position is more tenuous. It therefore found that once an applicant had become aware there was no realistic hope of regaining access to their property unexplained or excessive delay might lead to a rejection as out-of-time, however there were no specific time frames which could be applied. In the present case the earliest

time to apply would have been in 2002 when Azerbaijan ratified the Convention. However when joining the Council of Europe both Armenia and Azerbaijan had undertaken to seek a peaceful settlement of the Nagorno-Karabakh conflict and a period of negotiation followed. The applicant could therefore for some time have had a reasonable expectation of a solution being reached. In applying in 2006 he had acted without undue delay.

***Chriogov v Armenia*, App No. 13216/05**
This is another admissibility case, the mirror image of the above case, decided on the same day and arising out of the same conflict. In this case the applicants are Azerbaijani Kurds who lived in the district of Lachin in Azerbaijan, which includes a corridor less than ten kilometres wide between Nagorno-Karabakh and the Armenian Soviet Socialist Republic. The great majority of Lachin's population were Kurds and Azeris. As a result of the conflict the applicants were forced to flee in May 1992, and have not been able to return since.

The applicants plead the same violations as ***Sargsyan***, but in reverse, as ethnic Azeris against the Government of Armenia; Article 1 Protocol 1; Article 8; and Articles 13 and 14. The Government of Azerbaijan is a third party intervener. The Government of Armenia contends the same issues as the Government of Azerbaijan in the above case, on similar grounds, disputing its territorial jurisdiction; the victim status of the applicants; the exhaustion of domestic remedies and time-limits of the Court. The Court maintains the same approach of finding the case admissible and joining these issues to the merits of the case.