



Armenian refugee's rights violated by lack of access to his property in Azerbaijan, left behind in conflict over Nagorno-Karabakh

In today's **Grand Chamber** judgment¹ in the case of **Sargsyan v. Azerbaijan** (application no. 40167/06) the European Court of Human Rights held, by a majority, that there had been:

a continuing violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights;

a continuing violation of Article 8 (right to respect for private and family life) of the Convention; and

a continuing violation of Article 13 (right to an effective remedy).

The case concerned an Armenian refugee's complaint that, after having been forced to flee from his home in the Shahumyan region of Azerbaijan in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh, he had since been denied the right to return to his village and to have access to and use his property there.

It was the first case in which the Court had to decide on a complaint against a State which had lost control over part of its territory as a result of war and occupation, but which at the same time was alleged to be responsible for refusing a displaced person access to property in an area remaining under its control.

There are currently more than one thousand individual applications pending before the Court which were lodged by persons displaced during the conflict over Nagorno-Karabakh.

In Mr Sargsyan's case, the Court confirmed that, although the village from which he had to flee was located in a disputed area, Azerbaijan had jurisdiction over it.

The Court considered that while it was justified by safety considerations to refuse civilians access to the village, the State had a duty to take alternative measures in order to secure Mr Sargsyan's rights as long as access to the property was not possible. The fact that peace negotiations were ongoing did not free the Government from their duty to take other measures. What was called for was a property claims mechanism which would be easily accessible to allow Mr Sargsyan and others in his situation to have their property rights restored and to obtain compensation.

Principal facts

The applicant, Minas Sargsyan, an Armenian national, was born in 1929 and died in 2009 in Yerevan after having lodged his complaint with the European Court of Human Rights in 2006. Two of his children have pursued the application on his behalf.

Mr Sargsyan stated that he and his family, ethnic Armenians, used to live in the village of Gulistan, in the Shahumyan region of the Azerbaijan SSR, where he had a house and a plot of land. According to his submissions, his family was forced to flee from their home in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh.

1. Grand Chamber judgments are final (Article 44 of the Convention). All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

At the time of the dissolution of the Soviet Union in December 1991, the Nagorno-Karabakh Autonomous Oblast (“the NKAO”) was an autonomous province landlocked within the Azerbaijan Soviet Socialist Republic (“the Azerbaijan SSR”). In 1989 the NKAO had a population of approximately 77% ethnic Armenians and 22% ethnic Azeris. The Shahumyan region shared a border with the NKAO and was situated north of it. According to Mr Sargsyan, prior to the conflict, 82% of the population of Shahumyan were ethnic Armenians.

Armed hostilities in Nagorno-Karabakh started in 1988. In September 1991 – shortly after Azerbaijan had declared its independence from the Soviet Union – the Regional 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. Following a referendum in December 1991 – boycotted by the Azeri population – in which 99.9% of those participating voted in favour of the secession of the NKR from 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 had 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. Negotiations for a peaceful solution have been carried out under the auspices of the Organization for Security and Co-operation in Europe (OSCE). However, no final political settlement of the conflict has so far been reached. The self-proclaimed independence of the “NKR” has not been recognised by any state or international organisation.

Prior to their accession to the Council of Europe in 2001, Armenia and Azerbaijan both gave undertakings to the Committee of Ministers and the Parliamentary Assembly, committing themselves to the peaceful settlement of the Nagorno-Karabakh conflict.

Shahumyan, where Mr Sargsyan’s family lived, did not form part of NKAO, but was later claimed by the “NKR” as part of its territory. In 1991 special-purpose militia units of the Azerbaijan SSR launched an operation in the region with the stated purpose of “passport checking” and disarming local Armenian militants in the region. However, according to various sources, those Government forces used the official purpose as a pretext and expelled the Armenian population of a number of villages in the region. In 1992, when the conflict escalated into war, the Shahumyan region came under attack by Azerbaijani forces. Mr Sargsyan and his family fled Gulistan following heavy bombing of the village in July 1992. He and his wife subsequently lived as refugees in Yerevan, Armenia.

In support of his claim that he had lived in Gulistan for most of his life until his forced displacement in 1992, Mr Sargsyan submitted a copy of his former Soviet passport and his marriage certificate. He also submitted, in particular: a copy of an official certificate (“technical passport”), according to which a two-storey house in Gulistan and more than 2000 sq. m of land were registered in his name; photos of the house; and written statements from former officials of the village council and from former neighbours confirming that Mr Sargsyan had had a house and a plot of land in Gulistan.

Complaints, procedure and composition of the Court

Mr Sargsyan complained that the denial by the Azerbaijani Government of his right to return to the village of Gulistan and to have access to, control, use and enjoy his property or to be compensated for its loss amounted to a continuing violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights. He further complained that the denial of his right to return to Gulistan and have access to his home and to the graves of his relatives constituted a continuing violation of Article 8 (right to respect for private and family life) of the Convention. Relying on Article 13 (right to an effective remedy) of the Convention, in conjunction with the other complaints, he further complained that no effective remedy was available to him. Lastly, he

submitted under Article 14 (prohibition of discrimination), in conjunction with the other complaints, that he had been discriminated against on the basis of his ethnic origin and religious affiliation.

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 had been assigned relinquished jurisdiction in favour of the Grand Chamber.² The Armenian Government was granted leave to intervene as a third party. A first Grand Chamber hearing was held on 15 September 2010.

In a decision of 14 December 2011, the Court declared the application partly admissible. Noting that it was in dispute between the parties whether the Government of Azerbaijan had effective control over Gulistan, the Court joined the Government's objection that it lacked jurisdiction and had no responsibility under Article 1 of the Convention to its examination of the merits of the case. Furthermore, the Court joined to the examination of the merits of the case the following questions: whether Mr Sargsyan had been in a position to claim victim status in respect of the alleged continued lack of access to the graves of his relatives in Gulistan; whether effective remedies existed at national level, which should have been used by him.

At the same time, the Court rejected the Government's objection based on the declaration, which they had made at the time of ratifying the Convention, and their objection that the application fell outside the Court's temporal jurisdiction, finding that Mr Sargsyan's lack of access to his property, his home and his relatives' graves had to be considered a continuing situation which the Court could examine as from 15 April 2002, the date on which Azerbaijan had ratified the Convention. The Court also dismissed the objection by the Government of Azerbaijan that the application had been submitted out of time.

A second Grand Chamber hearing on the merits of the case was held on 5 February 2014.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
 Josep **Casadevall** (Andorra),
 Guido **Raimondi** (Italy),
 Mark **Villiger** (Liechtenstein),
 Isabelle **Berro** (Monaco),
 Ineta **Ziemele** (Latvia),
 Boštjan M. **Zupančič** (Slovenia),
 Alvina **Gyulumyan** (Armenia),
 Khanlar **Hajiyev** (Azerbaijan),
 George **Nicolaou** (Cyprus),
 Luis **López Guerra** (Spain),
 Ganna **Yudkivska** (Ukraine),
 Paulo **Pinto de Albuquerque** (Portugal),
 Ksenija **Turković** (Croatia),
 Egidijus **Kūris** (Lithuania),
 Robert **Spano** (Iceland),
 Iulia Antoanella **Motoc** (Romania),

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

² Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects".

Decision of the Court

Admissibility

As regards the questions of admissibility, which it had joined to the examination of the merits of the case, the Court considered it appropriate to deal with the questions of exhaustion of domestic remedies and of lack of jurisdiction as separate points. On the other hand, it decided to deal with the Government's objection regarding Mr Sargsyan's victim status in respect of his relatives' graves when examining the alleged violation of Article 8 of the Convention.

Exhaustion of legal remedies at domestic level

The Court dismissed the objection of the Government of Azerbaijan that Mr Sargsyan had failed to exhaust the legal remedies at national level. It noted in particular that in view of the Nagorno-Karabakh conflict – having regard to the fact that there were no diplomatic relations between Armenia and Azerbaijan and that borders were closed – there might be considerable practical difficulties for a person from one country in bringing legal proceedings in the respective other country. The Government of Azerbaijan had failed to explain how the legislation on the protection of property would apply in the situation of an Armenian refugee who wished to claim restitution or compensation for the loss of property left behind in the context of the conflict. They had not provided any example of a case in which a person in the applicant's situation had been successful before the Azerbaijani courts. The Government had thus failed to prove that a remedy capable of providing redress in respect of Mr Sargsyan's complaints was available.

Jurisdiction and responsibility of Azerbaijan

The Court also dismissed the Government's objection that Azerbaijan lacked jurisdiction and had no responsibility under Article 1 of the Convention as regards Mr Sargsyan's complaints.

Given that the village of Gulistan was situated on the internationally recognised territory of Azerbaijan – a fact which was not in dispute between the parties – under the Court's case-law, the presumption applied that Azerbaijan had jurisdiction over the village. It was therefore for the Government to show that exceptional circumstances existed, which would limit their responsibility under Article 1 of the Convention. The Court noted that Gulistan and the Azerbaijani military forces were located on the north bank of a river, while the "NKR" positions were located on the south bank of that river. On the basis of the material before the Court it was not possible to establish whether there had been a presence of Azerbaijani military forces in Gulistan – of which there were a number of indications – throughout the period falling within its temporal jurisdiction, namely from April 2002, when Azerbaijan ratified the Convention, until the present. It was significant to note, however, that none of the parties had alleged that the "NKR" had any troops in the village. The Court was not convinced by the Government's argument that, since the village was located in a disputed area, surrounded by mines and encircled by opposing military positions, Azerbaijan had only limited responsibility under the Convention. The Court noted in particular that, in contrast to other cases in which it had found that a State had only limited responsibility over part of its territory due to occupation by another State or the control by a separatist regime, it had not been established that Gulistan was occupied by the armed forces of another State.

Article 1 of Protocol No. 1 (protection of property)

Having regard to the parties' submissions and all evidence before it, the Court considered that Mr Sargsyan had sufficiently substantiated his claim that at the time of his flight in June 1992 he had rights to a house and a plot of land in Gulistan, which constituted possessions within the meaning of Article 1 of Protocol No. 1.

In particular, the Court accepted that the "technical passport" submitted by Mr Sargsyan constituted evidence that he had held title to the house and the land, which had not convincingly been rebutted

by the Government. Moreover, Mr Sargsyan's submissions as to how he had obtained the land and the permission to build a house were supported by statements from a number of family members and former villagers. While those statements had not been tested in cross-examination, they were rich in detail and demonstrated that the people concerned had lived through the events described. The Court observed that under the relevant laws of the Azerbaijan SSR in force at the time, there was no private ownership of land, but citizens could own residential houses. Plots of land could be allocated to citizens for special purposes such as farming or construction of individual houses. In that case, the citizen had a "right of use", limited to the specific purpose, which was protected by law and could be inherited. There was, therefore, no doubt that Mr Sargsyan's rights in respect of the house and land represented a substantive economic interest.

While Mr Sargsyan's forced displacement from Gulistan fell outside the Court's temporal jurisdiction, it had to examine whether the Government of Azerbaijan had breached his rights in the ensuing situation, which continued after the entry into force of the Convention in respect of Azerbaijan. His was the first case in which the Court had to rule on the merits of a complaint against a State which had lost control over part of its territory as a result of war and occupation, but which at the same time was alleged to be responsible for refusing a displaced person access to property in an area remaining under its control.

Having regard to the fact that Gulistan was situated in an area of military activity and at least the area around it was mined, the Court accepted the Government's argument that refusing civilians, including Mr Sargsyan, access to the village was justified by safety considerations. However, the Court considered that as long as access to the property was not possible, the State had a duty to take alternative measures in order to secure property rights – and thus to strike a fair balance between the competing public and individual interests concerned –, as was acknowledged by the relevant international standards issued by the United Nations and the Council of Europe.

The mere fact that peace negotiations under the auspices of the OSCE were ongoing – which included issues relating to displaced persons – did not free the Government from their duty to take other measures, especially having regard to the fact that the negotiations had been ongoing for over twenty years. It would therefore be important to establish a property claims mechanism which would be easily accessible to allow Mr Sargsyan and others in his situation to have their property rights restored and to obtain compensation for the loss of the enjoyment of their rights. While the Court was aware that the Government of Azerbaijan had had to provide assistance to hundreds of thousands of internally displaced persons – namely those Azerbaijanis who had had to flee from Armenia and from Nagorno-Karabakh and the surrounding districts –, the protection of that group did not exempt the Government entirely from its obligations towards Armenians as Mr Sargsyan who had had to flee as a result of the conflict.

In conclusion, the Court considered that the impossibility for Mr Sargsyan to have access to his property in Gulistan without the Government taking any alternative measures in order to restore his property rights or to provide him with compensation had placed an excessive burden on him. There had accordingly been a continuing violation of his rights under Article 1 of Protocol No. 1.

[Article 8 \(right to respect for private and family life and the home\)](#)

Having regard to the evidence submitted by Mr Sargsyan, the Court found it established that he had lived in Gulistan for the major part of his life until being forced to leave; he thus had had a "home" there and his inability to return to the village had affected his "private life" for the purpose of Article 8. The Court considered that, in the circumstances of the case, his cultural and religious attachment to his late relatives' graves in the village might also fall within the notion of "private and family life". The Court therefore dismissed the Government's objection concerning Mr Sargsyan's victim status in respect of his relatives' graves.

The Court referred to its findings under Article 1 of Protocol No. 1 and held that the same considerations applied in respect of Mr Sargsyan's complaint under Article 8. The impossibility for him to have access to his home and to his relatives' graves in Gulistan without the Government taking any measures in order to address his rights or to provide him at least with compensation, had placed a disproportionate burden on him. There had accordingly been a continuing violation of Article 8.

Article 13 (right to an effective remedy)

The Court referred to its finding – with regard to the admissibility of the complaints – that the Government of Azerbaijan had failed to prove that a remedy capable of providing redress to Mr Sargsyan in respect of his Convention complaints and offering reasonable prospects of success was available. Moreover, the Court's findings under Article 1 of Protocol No. 1 and Article 8 related to the State's failure to create a mechanism which would allow him to have his rights in respect of property and home restored and to obtain compensation for the losses suffered. There was therefore a close link between the violations found under Article 1 of Protocol No. 1 and Article 8 on the one hand and the requirements of Article 13 on the other. In conclusion, the Court finds that there has been and continues to be no effective remedy available in respect of the violation of Mr Sargsyan's rights. There had accordingly been a continuing breach of Article 13.

Article 14 (prohibition of discrimination)

The Court considered that no separate issue arose under Article 14, as Mr Sargsyan's complaints under Article 14 amounted essentially to the same complaints which the Court had examined under Article 1 of Protocol No. 1, Article 8 and Article 13.

Just satisfaction (Article 41)

Having regard to the exceptional nature of the case, the Court, by a majority, held that the question of the application of Article 41 (just satisfaction) was not ready for decision. Consequently, it reserved that question and invited both parties to submit within twelve months their observations on this matter and to notify the Court of any agreement they might reach.

Separate opinions

Judges Ziemele and Yudkivska each expressed a concurring opinion. Judge Gyulumyan expressed a partly dissenting opinion. Judges Hajiyev and Pinto de Albuquerque each expressed a dissenting opinion. These separate opinions are annexed to the judgment.

The judgment is available in English and French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.