



In partnership with Memorial Human Rights Centre (MHRC), the Georgian Young Lawyers' Association (GYLA) and Article 42 of the Constitution

## Seeking remedy and the last hope for returning home

*Narine Gasparyan, President, Legal Guide; Advocate, Chamber of Advocates of the Republic of Armenia*

17 years have passed since 330,000 of the 400,000 ethnic Armenians living in the Azerbaijan Soviet Socialist Republic (SSR) sought refuge in Armenia as a result of the Nagorno-Karabakh conflict. A significant number more left for Russia between 1988 and 1993.<sup>1</sup> To date, none of the ethnic Armenians who fled their homes in Azerbaijan have been able to return to enjoy their property.

Following their forced displacement from Azerbaijan, some ethnic Armenians tried to restore their violated property and other rights in the Azerbaijani domestic courts. However, none of these efforts were successful and The UN Committee on Economic Social and Cultural Rights (CESCR) has held that their property is still being illegally occupied and used by Azeris while the real owners of these houses are prevented from returning to their homes. CESCR in its concluding observations on Azerbaijan in 2004 specifically indicated: *"The Committee is concerned about the illegal occupation by refugees and internally displaced persons of properties belonging to Armenians and other ethnic minorities"*.<sup>2</sup>

It was only after 15 April 2002, when the ECHR entered into force in Azerbaijan that those Armenians who fled from Azerbaijan could submit individual applications to the ECtHR as a last hope for obtaining redress for their violated rights. In 2006-07 the Armenian NGO, Legal Guide, submitted around 500 ap-

plications to the ECtHR about the enforced displacement of ethnic Armenians from their homes in Azerbaijan and certain Armenian territories which are currently under Azerbaijani control; the illegal occupation of property belonging to these people and the failure of the Government of Azerbaijan to ensure the return of property or provide relevant compensation to the applicants. Some applications also allege violations of Art. 6 ECHR where the applicants' claims concerning violations of their property and other rights that were submitted to judicial authorities in Azerbaijan have not been examined.

In two of the cases handled by Legal Guide (*Sargsyan v Azerbaijan* (No. 40167/06) and *Arakelyan v Azerbaijan* (No. 13465/07)) the ECtHR has applied Rule 54(2) of the Rules of Court and following a preliminary examination of their admissibility, the applications have been communicated to the Government of Azerbaijan, which has been invited to submit written observations on the admissibility and merits of these cases. In addition the Government of Armenia is participating in these cases as a third party on the basis that the applicants are Armenian nationals.

In his application Mr Sargsyan submits that in 1992 he was forcedly displaced from his home in the village of Gyulistan, Shahumyan Region, Azerbaijan. The applicant is ethnically Armenian and had lived in Gyulistan from birth until his displacement. The applicant currently lives in Yerevan, Armenia and is unable to return to his home in Gyulistan. He argues that his property

has been illegally occupied and that the Government of Azerbaijan has failed to ensure the return of his property or to provide him with relevant financial compensation for his property. Consequently, he is not only prevented from enjoying his property and other possession, but he also cannot access certain places of moral significance, such as the graves of his close relatives and family members.

Mr Arakelyan, an Armenian national, was forced to leave his home in the village of Artsvashen, Gegharkunik Region, Armenia, when Azerbaijani forces captured the village on 8 August 1992. He has been unable to return to his home since then and currently lives in another village in his home region. In his application to the ECtHR he complains of similar violations and issues to Mr Sargsyan.

Depending on how many cases of this nature are deemed admissible by the ECtHR, it may be that it will consider applying the pilot judgment procedure on the basis of the similar facts of the displacement of Armenians from their homes either in Azerbaijan or in territory now controlled by Azerbaijan.

1 UN High Commissioner for Refugees, 1 October 1999. UNHCR CDR Background Paper on Refugees and Asylum Seekers from Armenia, [Online]. Available at: <http://www.unhcr.org/refworld/category/COI,UNHCR,,ARM,3ae6a6500,0.html>.

2 ECOSOC, 14 December 2004. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Azerbaijan, [Online]. Available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.104.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.104.En?Opendocument).