

EHRAC

Bulletin

Admissibility decision by Grand Chamber

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Sargsyan v Azerbaijan

(No. 40167/06) dec 14.12.11

Facts:

The applicant, Minas Sargsyan, was an Armenian refugee forced to flee from his home in 1992 during the Armenian – Azerbaijani conflict over Nagorno-Karabakh (the NKAO). He died in 2009 and his widow and children are pursuing the application on his behalf.

Until 1992, Mr Sargsyan lived with his family in Gulistan, in the Shahumyan district of Azerbaijan, bordering the NKAO. 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. In 1992 the conflict escalated into a full scale war, resulting in hundreds of thousands of internally displaced people and refugees on both sides.

In May 1994 the parties signed a cease-fire agreement, however, no final political settlement has been reached. Mr Sargsyan alleged 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 alleged that his forced displacement from Gulistan and the continuing refusal by the Azerbaijani Government to allow him access to his property and home violates Art. 1(1) (protection of property) and Art. 8 (respect for family life) of the European Convention on Human Rights (ECHR). He also complained under Art. 13 that there were no effective remedies available to ethnic Armenians forced to leave their homes in Azerbaijan, due to the unresolved status of the Nagorno-Karabakh conflict. Further, relying again on

Art. 8 he complained of reports of vandalism of Armenian cemeteries in Azerbaijan and the distress this information caused him. Lastly, he claimed a violation of Art. 14 (non-discrimination) in that only ethnic Armenians living in Azerbaijan were the target of violence and that the Azerbaijani Government failed to investigate attacks against Armenians or to provide redress for the illegal occupation of their properties.

The Chamber relinquished jurisdiction to 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 ratified the ECHR in 2002 with effect throughout its territory, it had made a declaration that it was unable to guarantee the application of the ECHR 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 ECHR 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 ECHR requirements, in that it was 'of a general character' and was not related to a specific provision or of defined scope. The Court therefore dismissed the Governments objection.

There was also the jurisdictional issue of Azerbaijan's effective control over the area concerned. The Government contested this stating that Gulistan was a heavily mined area and therefore it had no access to or control over the village and its responsibility under Art. 1 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 this question and joined it to the merits.

Temporal Jurisdiction:

The Court noted that the applicant's displacement had been an instantaneous act in 1992, before Azerbaijan ratified the ECHR (April 2002) and therefore fell outside the Court's temporal competence. However, the Court held that his subsequent lack of access to his home was a continuing situation, which it was competent to examine from 2002 onwards.

Victim status regarding the destruction of graves:

The applicant could not be a 'victim' in respect of the general situation of destruction of Armenian graves in Azerbaijan, since he would have to be directly affected by an action or inaction, and therefore the Court dismissed this part of the applicants case.

Exhaustion of domestic remedies:

The applicant alleged a general administrative practice by the Government showing unwillingness to protect abandoned property of ethnic Armenians or to provide compensation and the Court joined this issue to the merits.

Time-limit:

The Court reiterated its case law concerning the application of the six 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 relevant in both. It had regard to the particular features of cases concerning continuing violations

in complex post-conflict situations where solutions depend upon political negotiations and the link between the progress of the negotiations 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 this case the earliest time to apply would have been in 2002 when Azerbaijan ratified the ECHR. 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.

Chiragov v Armenia (No. 13216/05) 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, Azerbaijan, which includes a corridor between Nagorno-Karabakh and the Armenian Soviet Socialist Republic. The 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; Art. 1(1); Art. 8; and Art. 13 and 14. The Gov-

ernment 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.