

06 July 2007

FIRST SECTION

Application no. 40167/06
by Minas SARGSYAN
against Azerbaijan
lodged on 11 August 2006

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Minas Sargsyan, was born in 1929 and lives in Yerevan. He is represented before the Court by Ms N. Gasparyan and Ms K. Ohanyan, lawyers practising in Yerevan.

The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Armenian-Azerbaijani conflict over Nagorno-Karabakh

Prior to the dissolution of the USSR, the Nagorno-Karabakh Autonomous Oblast (“NKAO”) was an autonomous province of the Azerbaijan Soviet Socialist Republic (“Azerbaijan SSR”). In 1989 NKAO’s population (around 190,000) was approximately 75 percent ethnic Armenian and 25 percent ethnic Azeri. There was no common border between NKAO and the Armenian Soviet Socialist Republic (“Armenian SSR”), which were separated by the Azerbaijani region of Lachin.

In February 1988 ethnic Armenians of NKAO held demonstrations in the regional capital Stepanakert, demanding the incorporation of NKAO into Armenia. Similar demonstrations were held in Yerevan.

On 20 February 1988 Armenian deputies from Nagorno-Karabakh appealed to the Supreme Soviets of the Armenian SSR, Azerbaijan SSR and USSR with the request to allow NKAO to secede from Azerbaijan and join Armenia. This request was approved by the Armenian SSR, but turned down by the Azerbaijan SSR and the USSR Government.

Around this time, armed hostilities between the two ethnic groups in Nagorno-Karabakh commenced. In the meantime, first waves of refugees were reported to have been driven out of their homes in Armenia and Azerbaijan starting from the late 1987. In January 1989 the USSR Government placed NKAO under Moscow’s direct rule but returned control to the Azerbaijan SSR later that year.

On 1 December 1989 the legislatures of the Armenian SSR and NKAO adopted a joint resolution on unification of NKAO with Armenia.

On 31 August 1991 Azerbaijan declared independence from the Soviet Union, which was subsequently dissolved in December 1991.

On 2 September 1991 Armenian members of the Regional Council of NKAO announced the establishment of the “Nagorno-Karabakh Republic” (“NKR”). On 26

November 1991 the Azerbaijani Parliament abolished the autonomy previously enjoyed by Nagorno-Karabakh. On 6 January 1992 “NKR” declared independence from Azerbaijan.

In 1992 the armed hostilities between Armenians and Azerbaijanis escalated into a full-scale war. By the end of 1993, 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 persons 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 any international organisation. Armenia has not recognised the area as an independent state, although, according to various sources, it maintains close political, economic and military relations with “NKR”.

B. The applicant and his possessions in the Shahumyan region

The applicant and his family, ethnic Armenians, lived in the village of Gulistan of the Shahumyan region of the Azerbaijan SSR. The applicant had a two-floor house with auxiliary premises, with a total area of 167 square metres.

Geographically, Shahumyan shared a border with NKAO and was situated to the north of it. 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.

Since January 1991, Shahumyan was abolished as a separate administrative region and was formally incorporated into the present-day Goranboy region of the Republic of Azerbaijan.

In April-May 1991 the USSR Internal Forces and the special-purpose militia units (OMON) of the Azerbaijan SSR launched a military operation with the stated purpose of “passport checking” and disarming local Armenian militants in the region. However, according to various sources, using the official purpose of the operation as a pretext, the government forces deported the Armenian population of a number of villages in the Shahumyan region, forcing them to leave their homes and flee to Nagorno-Karabakh or Armenia. The deportations were accompanied by arrests and violence towards civilian population. It is not clear whether Gulistan, the applicant’s village, was affected by these events, as the applicant appears to have remained in the village after the operation was aborted.

However, when the conflict escalated into a full-scale war, Gulistan came under direct attacks by Azerbaijani forces. Either in January or June 1992¹ the village was bombed. The applicant’s house was destroyed. On the day of this bombing, the entire population of the village, including the applicant and his family members, fled the village fearing for their lives.

C. Armenian cemeteries in Azerbaijan

According to the applicant, many Armenian cemeteries in Azerbaijan have been vandalised, damaged or destroyed. In 2003 the mayor of Baku reportedly announced that

he was planning to build a road across a part of an old cemetery in Baku which, among others, contained many graves of ethnic Armenians. The graves affected by this construction would be relocated. A number of concerns were voiced about the inability of the Armenian refugees, who had fled Baku many years before, to authorise and take part in the reburial of their deceased relatives.

There were also reports alleging that, starting from 2002, an ancient Armenian cemetery, called Jugha cemetery, was demolished near the town of Julfa in the Nakhichevan region of Azerbaijan.

No information was available to the applicant concerning the condition of the graves of his close relatives in Gulistan.

COMPLAINTS

1. The applicant complained under Article 1 of Protocol No. 1 that the destruction of his house and his eviction from his property constituted a violation of his right to peaceful enjoyment of his possessions. He maintained that he remained as the rightful owner of the house and was unaware of any decisions of Azerbaijani authorities annulling his rights to the property left behind in Azerbaijan. He claimed that “currently another person [was] living in his house”.

2. The applicant complained under Article 8 of the Convention that his rights to respect for private and family life and his home were violated due to his forced displacement and continuing refusal by the respondent Government to allow him access to his home and belongings. Furthermore, he complained that the respondent Government did not comply with its positive obligations to protect his rights under Article 8.

3. Relying on Articles 3, 8 and 9 of the Convention, the applicant complained about the reports concerning alleged demolition or vandalism of Armenian cemeteries in Azerbaijan. He submitted that he was not aware of what happened to the graves of his close relatives and that he was deprived of the possibility to visit their graves, which was something he had done regularly in the past. The mere fact of knowing that the graves of his relatives were under the risk of being destroyed caused him severe suffering and distress. Inability to visit the cemetery violated his right to respect for private and family life and deprived him of the spiritual communication with his dead relatives, as visiting and maintenance of cemeteries was one of the religious customs that the applicant had followed.

4. The applicant complained under Article 13 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. The applicant claimed that “the majority of ethnic Armenians” had attempted to lodge complaints with the relevant Azerbaijani authorities, but were unable to obtain any redress for violation of their rights. In general, due to the unresolved status of the Nagorno-Karabakh conflict, there existed practical difficulties and obstacles for gaining direct access to any remedies available in Azerbaijan.

5. The applicant complained under Article 14 of the Convention, in conjunction with his other complaints, that he had been subjected to discrimination on the basis of his ethnic and religious affiliation. He submitted that only ethnic Armenians living in

Azerbaijan had been the target of violence, pogroms and attacks. The respondent Government failed to investigate violence against Armenians and to provide redress for illegal occupation of their properties as well as destruction of Armenian cemeteries.

QUESTIONS TO THE PARTIES

1. The parties are requested to provide full information, substantiated by the relevant evidence, as to which State the applicant is the national.

2. Do the applicant's complaints fall within the Court's competence *ratione temporis*? Do these complaints concern a continuing situation? How does the six-months rule contained in Article 35 § 1 of the Convention apply to the present case?

3. Can the applicant be said to have exhausted the domestic remedies in respect of all of his complaints, as required by Article 35 § 1 of the Convention? What remedies were or are still available to the applicant and would these remedies be effective? The parties are requested to specify (and substantiate with copies of relevant documents) whether the applicant has ever lodged any applications, requests or complaints with the relevant authorities seeking to be allowed access to his home and graves of his deceased relatives and, if so, whether he was denied such access.

4. Did the applicant have "possessions" within the meaning of Article 1 of Protocol No. 1 in the territory in question at the time when he was forced to flee? If so, can he still be considered as a legal owner (or holder of other rights *in rem*) in respect of these "possessions"? In addition to the document submitted by the applicant, the parties are requested to submit any other relevant registration documents, state register extracts, descriptions or plans concerning the property in question. The Government are requested to specify whether the property in question still exists and, if so, who it belongs to.

5. Are the applicant's rights to respect for home and private and family life and his right to peaceful enjoyment of possessions guaranteed by Article 8 of the Convention and Article 1 of Protocol No. 1, respectively, violated by the fact that he was unable to return to his home in the former Shahumyan region due to the conflict in Nagorno-Karabakh?

6. Does the applicant's inability to visit the graves of his deceased relatives constitute an interference with the applicant's right to respect for his private and family life, within the meaning of Article 8 § 1 of the Convention? If so, is that interference justified in terms of Article 8 § 2? The Government are requested to provide information (substantiated by appropriate evidence) concerning the present-day condition of the cemetery where the applicant's deceased relatives are interred.

7. Does the applicant have an effective remedy at his disposal in respect of his complaints under Article 8 of the Convention and Article 1 of Protocol No. 1? If not, does this amount to a violation of Article 13 of the Convention?

8. Has the applicant been subjected to discrimination in violation of the requirements of Article 14 of the Convention taken in conjunction with Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1?

1. On page 7 of his application, the applicant claims that he was forced to leave Gulistan in June 1992. On page 8, he submits that Gulistan was bombed on 13 January 1992 and that he fled the village on the same day.

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