



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

09 June 2008

FIRST SECTION

Application no. 13465/07  
by Samvel ARAKELYAN  
against Azerbaijan  
lodged on 18 February 2007

**STATEMENT OF FACTS**

THE FACTS

The applicant, Mr Samvel Arakelyan, is an Armenian national who was born in 1937 and lives in Chambarak. 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 Artsvashen**

The applicant is an Armenian who lived in the village of Artsvashen in the Gegharquinq region in the north-eastern part of the Republic of Armenia. In Soviet times Artsvashen formed part of the Krasnoselsk province of the SSR of Armenia, situated as an enclave within the territory of the Azerbaijan SSR. According to the 1989 census the population of Artsvashen was 2,800 all ethnic Armenians.

The applicant lived in Artsvashen with his family, namely his wife and their five children. He states to have owned a house of 72 square meters and 2,060 square meters of land. Moreover, he owned 4.05 hectares of privatised agricultural land plus live stock, agricultural equipment and 240 square meters of cattle-breeding farm and auxiliary equipment.

In 1992 the Nagorno-Karabakh conflict escalated into a full-scale war. In early August Artsvashen was subject to aerial and artillery bombardment from Azeri forces for several days.

On 8 August 1992 the applicant and his family fled the village fearing for their lives. The village was occupied by Azeri forces and the applicant, who is now living in Chambarak in the Gegharquinq region of Armenia, has been unable to return ever since.

### **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 Jughha 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 Artsvashen.

## COMPLAINTS

1. The applicant complained under Article 1 of Protocol No. 1 about the eviction from his property in Artsvashen by Azerbaijani armed forces and the impossibility to return to his village. He argued that this constituted a continuous violation, as he remained the rightful owner of the house and other property but was deprived of any possibility to enjoy these possessions. The situation amounted to a *de facto* expropriation for which he had not received any compensation. The applicant argued that Azerbaijan had jurisdiction over Artsvashen which had come and still was under its effective control as a result of military action.

2. The applicant complained under Article 8 of the Convention that his rights to respect for his private and family life and his home were violated due to his forced displacement and the continuing refusal by the respondent Government to allow him access to his home and belongings. Furthermore he complained that the respondent Government failed to 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 that according to reports from various sources, including international organisations, Armenian cemeteries in Azerbaijan were vandalised and demolished. 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 is 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 in Artsvashen violated his right to respect for his 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 he 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 had been forced to leave their homes in Azerbaijan. The applicant claimed that many ethnic Armenians had attempted to lodge complaints with the relevant Azerbaijani authorities, but had been unable to obtain any redress for violations 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 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 or for the destruction of Armenian cemeteries.

### **QUESTIONS TO THE PARTIES**

1. Do the applicant's complaints fall within the jurisdiction of Azerbaijan within the meaning of Article 1 of the Convention? The Government are requested to specify:

- whether Azerbaijani military forces occupied Artsvashen in August 1992
- if so, whether Azerbaijan maintained military presence in and control over the area since then? Have any Armenian nationals been admitted to the area at issue?

2. Do the applicant's complaints fall within the competence of the Court *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 domestic remedies in respect of all his complaints, as required by Article 35 § 1 of the Convention? What remedies were or are still open to the applicant and would these remedies be effective?

The parties are requested to specify (and to submit copies of all relevant documents) whether the applicant has ever lodged any applications, requests or complaints to the relevant authorities seeking to be allowed access to his home and to the graves of his deceased relatives and, if so, whether he was denied such access.

The respondent Government are also requested to submit applications lodged by others relating to similar complaints and any documents concerning the outcome of such applications.

4. Did the applicant have "possessions" within the meaning of Article 1 of Protocol No. 1 in Artsvashen at the time he was forced to flee? If so, can he be considered as the legal owner (or holder of other rights *in rem*) of the house, territory and other assets? Was relevant legislation passed subsequently in Armenia affecting the applicant's position?

In addition to the document submitted by the applicant (namely the technical passport of the house) the applicant is requested to submit any other relevant registration documents, state register extracts or the like. The parties are further requested to provide a detailed plan and description of the

territory and the buildings in question. The Government are also requested to specify whether the buildings in question still exist and, if so, who they belong to.

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

6. Does the applicant's inability to visit the graves of his deceased relatives in Artsvashen constitute an interference with his 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 term of Article 8 § 2? The Government are requested to provide information (supported by appropriate evidence) of the present-day condition of Artsvashen cemetery where the applicant's deceased relatives are buried.

7. Does the applicant have an effective remedy at his disposal in respect of his complaints under Article 8 of the Convention and under 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?