



Complaints by Azerbaijani refugees, displaced during the Nagorno-Karabakh conflict, admissible

In its decision in the case of [Chiragov and Others v. Armenia \(application no. 13216/05\)](#) the European Court of Human Rights, sitting as a Grand Chamber, has by a majority declared the application admissible.

The case concerns the complaints by Azerbaijani refugees that they were forced to flee from their homes in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh.

The Court's admissibility decision in no way prejudices the merits of the applicants' complaints. The Court will deliver its judgment at a later date.

Principal facts

The applicants Elkhan Chiragov, Adishirin Chiragov, Ramiz Gebrayilov, Akif Hasanof, Fekhreiddin Pashayev and Qaraca Gabrayilov are all Azerbaijani nationals. Mr Qaraca Gabrayilov died in 2005 and his son is pursuing the application on his behalf. All but Mr Hasanof now live in Baku.

The case concerns the applicants' complaint that they were forced to flee from their homes in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh ("the NKAO")¹, which, until the dissolution of the Soviet Union in 1991, was an autonomous province landlocked within the Azerbaijan Soviet Socialist Republic ("the Azerbaijan SSR"). In 1989 the NKAO was approximately 75% ethnic Armenian and 25% ethnic Azeri.

Armed hostilities in Nagorno-Karabakh commenced in 1988, coinciding with Armenian demand for the incorporation of the NKAO into Armenia. In September 1991 Armenian members of the Regional Council of the NKAO announced the establishment of the "Nagorno-Karabakh Republic" ("NKR"), which then declared 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 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. 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 international organisation.

The applicants submitted that they are Azerbaijani Kurds who lived in the district of Lachin, in Azerbaijan, which includes a corridor less than ten kilometres wide between Nagorno-Karabakh and the Armenian Soviet Socialist Republic ("the Armenian SSR"). The great majority of Lachin's population were Kurds and Azeris. Due to the Nagorno-Karabakh conflict, the applicants were forced to flee on 17 May 1992. They have not been able to return to their homes and properties since.

¹ The Nagorno-Karabakh Autonomous Oblast.

Complaints, procedure and composition of the Court

The applicants complain in particular about the loss of their properties in Lachin, as well as various other possessions such as cars, livestock and handmade carpets. They also complain that there is no prospect for them in the foreseeable future to be able to use, sell, bequeath, mortgage or develop their property as the Armenian Government continues to refuse to allow them to return to Lachin. Nor have the Armenian authorities made any attempt to compensate them for their losses or to provide a remedy to persons displaced from the occupied territories. They rely on Article 1 of Protocol No. 1 (protection of property) and Articles 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the European Convention on Human Rights.

Finally, the applicants claim, under Article 14 (prohibition of discrimination) of the Convention in conjunction with all the above Articles, that, if they had been ethnic Armenian and Christian, they would not have been forcibly displaced from their homes by the Armenian-backed Karabakh forces and that their property rights would have been recognised and their complaints investigated.

The application was lodged with the European Court of Human Rights on 6 April 2005. On 9 March 2010 the Chamber to which the case was assigned relinquished jurisdiction in favour of the Grand Chamber². The Azerbaijani Government intervened as a third party.

The decision was given by the Grand Chamber of 17, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
Jean-Paul **Costa** (France),
Christos **Rozakis** (Greece),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Nina **Vajić** (Croatia),
Corneliu **Bîrsan** (Romania),
Peer **Lorenzen** (Denmark),
Boštjan M. **Zupančič** (Slovenia),
Elisabet **Fura** (Sweden),
Alvina **Gyulumyan** (Armenia),
Khanlar **Hajiyev** (Azerbaijan),
Egbert **Myjer** (the Netherlands),
Sverre Erik **Jebens** (Norway),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus),
Luis **López Guerra** (Spain), *Judges*,

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

Decision of the Court

Admissibility

Right of the sixth applicant's son to pursue the application

The Court found that Mr Gabrayilov's son was entitled to pursue the application which he had brought before the Court.

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".

Other pending international proceedings

The Court noted that the applicants had not been parties to the interstate talks conducted within the OSCE which had not and could not examine whether the applicants' individual rights had been violated. Therefore, the ongoing OSCE proceedings, which were in the form of negotiations within the Minsk Group of the OSCE, could not be seen as an international investigation or settlement of the matters raised in the application to the Court. Consequently, they did not prevent the examination of the applicants' complaints by the Court.

Territorial jurisdiction and responsibility of Armenia

The Court noted that it was in dispute between the parties whether the Government of Armenia had effective control over the area concerned. The Government contested this and argued that, consequently, their responsibility under Article 1 of the Convention was not engaged. The applicants and the Azerbaijani Government, intervening as a third party, asserted that the district of Lachin was under the effective control of Armenia.

The Court joined the Government's objection that it lacked jurisdiction and did not have responsibility under Article 1 of the Convention to its examination of the merits of the case, as it found that it did not have sufficient information to be able to decide on that question at the admissibility stage.

Temporal jurisdiction

The parties differed as to the reasons which had been preventing the applicants from returning to their homes. The Court found that while their displacement in 1992 had been an instantaneous act falling outside of the Court's temporal competence, their subsequent lack of access to their properties had to be considered a continuing situation which the Court could examine as from 26 April 2002, the date on which Armenia ratified the Convention.

The Court therefore rejected the Government's objection that the application fell outside the Court's temporal jurisdiction.

Victim status of the applicants

The Armenian Government maintained that the applicants had failed to provide sufficient evidence of their personal identity and the existence and their ownership of the properties they claimed.

The Court found that the questions were closely linked to the merits of the case and decided to examine them at that stage.

Exhaustion of domestic remedies

The Armenian Government claimed that effective remedies existed and that the applicants should have exhausted them before applying to the Court. The applicants and the Government of Azerbaijan contested that.

The Court found that the above issues were closely related to the merits and joined the examination of those questions to its examination of the merits of the complaints.

Compliance with the six-month rule

The Court reiterated its case-law concerning the application of the six-month rule in respect of continuing situations. It noted that it had qualified its previous case-law in disappearance cases by imposing a duty of diligence and initiative on applicants.

Notwithstanding important differences between cases concerning the continued failure to investigate disappearances and cases like today's case, concerning continuing denial of access to property and home, the Court found that general considerations of legal certainty were of relevance in both. It also had regard to the particular features of cases concerning complaints about continuing violations in a complex post-conflict situation. It therefore found in the context of today's case that once an applicant had become aware that there was no realistic hope of regaining access to their property and home in the foreseeable future, unexplained or excessive delay in lodging the application might lead to rejection of the application as out-of-time. There were no specific time-frames which could be applied.

Armenia ratified the Convention on 26 April 2002. Therefore, that had been the earliest time when the applicants could have applied to the Court. When joining the Council of Europe and ratifying the Convention, both Armenia and Azerbaijan had made a joint undertaking to seek a peaceful settlement of the Nagorno-Karabakh conflict. A period of intensified negotiation had followed. The applicants could, for some time, have reasonably expected that a solution to the conflict would be found.

In the circumstances, the Court concluded that by applying to the Court on 6 April 2005, that was about three years after the ratification of the Convention by Armenia, the applicants had acted without undue delay.

Consequently, the Court dismissed the Government's objection that the applicants' complaints about their continued lack of access to their property and homes had been submitted out of time.

Alleged violations of the Convention

The Court found that the applicants' complaints related to the alleged breaches of their rights to property and private and family life, to an effective remedy and not to be discriminated against, raised serious issues of facts and law under the Convention, and therefore required an examination on the merits. The Court declared those complaints admissible without prejudging the merits of the case.

The decision is available in English and French.

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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.