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

FIFTH SECTION

DECISION

Application no. 25589/16
Islam ALIYEV
against Armenia

The European Court of Human Rights (Fifth Section), sitting on 12 September 2023 as a Chamber composed of:

Georges Ravarani*, President*,
Carlo Ranzoni,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Erik Wennerström,
Mattias Guyomar,
Kateřina Šimáčková*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the above application lodged on 3 May 2016,

the observations submitted by the respondent Government and the observations in reply submitted by the applicant, and

the comments submitted by the Azerbaijani Government;

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Islam Aliyev, is an Azerbaijani national, who was born in 1937 and lives in Gapanli in the district of Tartar. He was represented before the Court by Mr A. Baghirov, a lawyer practising in Baku.

2. The Armenian Government were represented by their Agent, Mr Y. Kirakosyan.

3. The Azerbaijani Government, third-party intervener, were represented by their Agent, Mr Ç. Əsgərov.

A. Background

4. At the time of the demise of the Soviet Union, the conflict over the status of the region of Nagorno-Karabakh arose. In September 1991 the establishment of the "Republic of Nagorno-Karabakh" (the "NKR"; in 2017 renamed the "Republic of Artsakh") was announced, the independence of which has not been recognised by any State or international organisation. In early 1992 the conflict gradually escalated into a full-scale war which ended with the signing, on 5 May 1994, of a ceasefire agreement (the Bishkek Protocol) by Armenia, Azerbaijan and the "NKR". Following the war, no political settlement of the conflict has been reached; the situation has remained hostile and tense and there have been recurring breaches of the ceasefire agreement (see further *Chiragov v. Armenia* [GC], no. 13216/05, §§ 12-31, ECHR 2015; and *Sargsyan v. Azerbaijan* [GC], no. 40167/06, §§ 14-28, ECHR 2015). During the night between 1 and 2 April 2016 heavy military clashes started close to the line of contact between the "NKR" and Azerbaijan (sometimes referred to as the "Four-Day War"). The clashes lasted until 5 April, but further clashes took place later that month. Estimates of casualties vary considerably; official sources indicated at least 100 dead on either side of the conflict. The great majority of the casualties were soldiers but also several civilians died. Many residents in the targeted towns and villages had to leave their homes for certain periods of time. Furthermore, the clashes led to substantial property and infrastructure damage.

5. On 27 September 2020 another war broke out which lasted for 44 days until 10 November 2020 when a ceasefire agreement, signed the day before, entered into force. This war substantially changed the territorial control that had existed since the 1992-94 war.

B. The circumstances of the case

6. The facts of the case are disputed. They may be summarised as follows.

1. Facts as submitted by the applicant

(a) The situation in Gapanli

7. On 2 April 2016, at around 3 a.m., the Armenian armed forces began shelling Azerbaijani towns and villages located along the line of contact, using artillery and rocket launchers. Later that day, the village of Gapanli, situated next to the line of contact, came under shellfire from the Seysulan village on the "NKR" side.

8. Following the conclusion of a ceasefire agreement on 5 April 2016 an emergency commission, consisting of representatives of various local authorities, was established to assess the damage to civilian property in the region. Among other things, it conducted site examinations.

(b) The circumstances of the applicant

9. At around midnight on 4 April 2016 some shells hit the area surrounding the applicant's house, situated 400-500 metres away from the line of contact. Fragments broke windows and damaged doors and roof tiles. The applicant and all members of his family were at home but escaped injury.

10. On 8 April 2016 the above-mentioned commission conducted a site examination at the applicant's house. According to the protocol of the examination, the shelling had destroyed 48 sq. m of window glass and 250 sq. m of asbestos roof tiles as well as several doors.

2. Facts as submitted by the respondent Government

11. After having made threats to use military forces for a long time, Azerbaijan unleashed a large-scale offensive along the line of contact during the night between 1 and 2 April 2016. The "NKR" forces as well as civilian infrastructure and settlements came under heavy bombardment by artillery, tanks, armoured vehicles, rocket launchers and air force. Several towns and villages on the "NKR" side were intensely shelled and officials evacuated approximately 5000 residents. Over two dozen civilians were killed or wounded. Both the "NKR" forces and Azerbaijan lost a large number of troops and military equipment.

COMPLAINTS

12. The applicant complained that the actions of the attacking forces had put his life at risk, causing him anguish and distress, and had infringed his right to respect for his family life and home. He further submitted that his house had been damaged during the shelling, thereby depriving him of the peaceful enjoyment of his property. He invoked Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

Moreover, under Articles 13 and 14 of the Convention in conjunction with the other provisions invoked, the applicant maintained that there was no effective remedy in Armenia for his complaints and alleged that the military attacks had been directed against Azerbaijanis due to their ethnic and national origin.

THE LAW

A. The parties' submissions

1. The respondent Government

13. The Armenian Government submitted that the applicant had failed to exhaust domestic remedies, as he had made no attempt to address the authorities of Armenia or "the Republic of Artsakh" to exercise his right

under domestic law. They argued that any practical obstacles in this respect were due to the conduct and policy of the Azerbaijani Government and authorities.

14. The Government further maintained that the Republic of Armenia, for many reasons, did not have jurisdiction over the matters complained of within the meaning of Article 1 of the Convention. Referring to the case of *Banković and Others v. Belgium and Others* ((dec.) [GC], no. 52207/99, ECHR 2001-XII), they first argued that the use of cross-border force did not engage a State's jurisdiction, such jurisdiction being primarily territorial. The "proximity of effects" test later developed by the Court was not applicable in this case, as there had been no visual contact between the "NKR" forces and possible victims and as those forces had had no factual control over the applicant. Furthermore, the shelling was conducted by the "NKR" forces and not those of the Republic of Armenia and the alleged victims were outside of "NKR" territory. While the Court, in *Chiragov and Others* (cited above), had come to the conclusion that Armenia exercised effective control over the "NKR", in the Government's view that control must be understood as being exercised over the "NKR" entity and not over territory. The responsibility of Armenia could thus only take the form of a positive obligation to exert influence over the local administration. As the actions of the "NKR" in the present case had essentially been of a reactive nature – in response to a premeditated large-scale military action by Azerbaijan – they could not possibly have been influenced by Armenia. For the same reason, the use of force by the "NKR" should be qualified as legitimate self-defence under international humanitarian law. Moreover, the actions had been aimed at military targets only; the incidental civilian casualties and property damage had not been excessive and, in any event, had been caused by Azerbaijan which had deliberately placed its forces and military objectives in close proximity to populated areas.

15. Furthermore, the Government contended that the application was inadmissible for being manifestly ill-founded. They stated, in particular, that no medical records or other prima facie evidence had been presented which showed that the applicant's life had been at risk. There was not even an indication that the applicant or his family had been at home or in the village at the relevant time. Moreover, he had not submitted an ownership certificate concerning the house that had allegedly been damaged.

2. The applicant

16. Referring to the Court's conclusions in *Chiragov and Others* (cited above, §§ 115-120) that there was no effective remedy available for the applicants' complaints in that case, the present applicant submitted that the situation had not changed and that the respondent Government had not indicated that any such remedies existed.

17. In the applicant's view, the facts about which he complained fell under the jurisdiction of Armenia under Article 1 of the Convention. He referred to several judgments of the Court in which the circumstances for establishing jurisdiction were purportedly analogous to those of the present case. In particular, he pointed out that, in *Chiragov and Others* (cited above), the Court had established that Armenia had effective control over the occupied territories of Azerbaijan from which he and his house had been shelled. This conclusion had been reiterated in later judgments against Armenia. In response to the Armenian Government's argument that jurisdiction was primarily territorial, the applicant maintained that this did not exclude extraterritorial jurisdiction, as had been confirmed by the Court in several judgments delivered after the *Banković and Others* case. He also asserted that the "proximity of effects" test did not rule out jurisdiction simply by the lack of visual contact between soldiers and victim in the present case; the key point was still that, although the applicant was located outside the territory of the respondent Government, he had sustained injury and property damage through the fire opened by soldiers on the territory that was under effective control of that Government. In this connection, the applicant submitted that the respondent Government's view on the issue of effective control determined by the Court in the *Chiragov and Others* case was incorrect; the Court had clearly stated that Armenia "exercise[d] effective control over Nagorno-Karabakh and the surrounding territories" (§ 186 of the judgment, cited above). Finally, he maintained that the use of force in the present case had not been in compliance with the Convention or international humanitarian law. He asserted, *inter alia*, that the attacks by the Armenian forces had been disproportionate and indiscriminate and had deliberately targeted civilians and their property. Moreover, no Azerbaijani forces were positioned in the villages.

18. The applicant further maintained the submissions made concerning his personal circumstances in the original application, including his assertion that his life had been threatened, notably since his house and village had been under heavy shelling by the Armenian forces with the direct aim of killing the civilian population. The damage to his property showed that the danger to which he had been exposed had been real and imminent, in particular since he and his family had been at home during the shelling. He further maintained that he was the owner of the house in question and that he had submitted appropriate documents to prove this.

3. The Azerbaijani Government, third-party intervener

19. The Azerbaijani Government fully shared the applicant's position on the admissibility and merits of the application.

B. The Court's assessment

20. The Court notes at the outset that the case raises an issue under Article 1 of the Convention concerning the respondent State's jurisdiction in regard to the events of the armed conflict that form the basis of the applicant's complaints. This provision reads as follows:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

21. Jurisdiction under Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention. While a State's jurisdictional competence under Article 1 is primarily territorial, the Court has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts (see, for instance, *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 103-105, 19 October 2012, and *Chiragov and Others v. Armenia*, cited above, § 168, with further references).

22. The two main criteria established by the Court in regard to extraterritorial jurisdiction are that of "effective control" by the State over an area (spatial concept of jurisdiction) and that of "State agent authority and control" over individuals (personal concept of jurisdiction) (see, among many other authorities, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, §§ 133-140, ECHR 2011; *Georgia v. Russia (II)* [GC], no. 38263/08, §§ 113-144, 21 January 2021; and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16, 43800/14 and 28525/20, §§ 556-558, 30 November 2022).

23. In the case of *Chiragov and Others* (cited above, §§ 169-186) the Court found it established that, from the early days of the Nagorno-Karabakh conflict, Armenia had had a significant and decisive influence over the "NKR", that the two entities were highly integrated in virtually all important matters and that this situation persisted. In other words, the "NKR" and its administration survived by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercised effective control over Nagorno-Karabakh and the surrounding territories. This conclusion was later reiterated in *Muradyan v. Armenia* (no. 11275/07, § 126, 24 November 2016).

24. In the present case, the alleged violations of the Convention by Armenia were committed during the "Four-Day War", that is, the military clashes that occurred close to the line of contact between the "NKR" and

Azerbaijan from the night between 1 and 2 April 2016 until 5 April 2016. It must be determined whether the consequences of the international armed conflict at issue, in particular the consequences allegedly suffered by the applicant on territory beyond the line of contact between the "NKR" and Azerbaijan, could be considered to come within the extraterritorial jurisdiction of Armenia.

25. As noted by the Court in *Georgia v. Russia (II)* (cited above, § 126), in the event of military operations – including, for example, armed attacks, bombing or shelling – carried out during an international armed conflict one cannot generally speak of "effective control" over an area. The very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos means that there is no control over an area. However, there are certain exceptions and the *Georgia v. Russia (II)* judgment cannot, therefore, be seen as authority for excluding entirely from a State's Article 1 jurisdiction a specific temporal phase of an international armed conflict (see *Ukraine and the Netherlands v. Russia* (dec.), cited above, § 558).

26. The present case involved heavy shelling of towns and villages on either side of the line of contact for four days, resulting in many dead, wounded and temporarily homeless people as well as considerable damage to property and infrastructure on both sides. In these circumstances, and without any indication to the contrary, it was not a situation of "effective control" over an area.

27. It must therefore be determined whether there was "State agent authority and control" over individuals (the direct victims of the alleged violations) in accordance with the Court's case-law. In earlier cases, such authority and control have been established in circumstances involving the exercise of physical power and control over the persons in question or when there has been an element of proximity (see *Georgia v. Russia (II)*, cited above, §§ 130-132, with further references).

28. However, the active phase of hostilities under examination in the present case was very different, as it concerned bombing and artillery shelling by the armed forces on both sides of the conflict, seeking to put the enemy force *hors de combat* and capture territory. The factual elements of the case do not reveal any instance of control over or proximity to the individuals in question. In these circumstances, there cannot be said to have been "State agent authority and control" over individuals in regard to the events complained of by the applicant.

29. In conclusion, the Court finds that the military operations and their consequences at issue in the present case did not fall within the jurisdiction of Armenia for the purposes of Article 1 of the Convention, either as "effective control" over territory or as "State agent authority and control" over individuals. It follows that all the applicant's complaints must be

declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 5 October 2023.

Victor Soloveytchik Registrar	Georges Ravarani President