

ECHR: Nagorno-Karabakh : Sargsyan v. Azerbaijan

In the absence of a political solution to the Nagorno-Karabakh conflict, the Court awarded the applicants aggregate sums in just satisfaction

ECtHR Registrar (12.12.2017) – <http://bit.ly/2AgcoCR> – In today's **Grand Chamber** judgment¹ in the case of **Sargsyan v. Azerbaijan** (application no. 40167/06) the European Court of Human Rights ruled on the question of just satisfaction. It held, unanimously, that the Azerbaijani Government had to pay the applicant 5,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and EUR 30,000 in costs and expenses.

The case concerned an Armenian refugee's complaint that, after having been forced to flee from his home in the Shahumyan region of Azerbaijan in 1992 during the conflict over Nagorno-Karabakh, he had since been denied the right to return to his village and to have access to and use his property there.

The Court observed that the principle of subsidiarity underpinned the system of the European Convention on Human Rights. Thus, Armenia and Azerbaijan had given undertakings prior to their accession to the Council of Europe, committing themselves to the peaceful settlement of the Nagorno-Karabakh conflict. The Court could only underline that it was their responsibility to find a solution on a political level to the conflict. Without prejudice to any compensation to be awarded to the applicant as just satisfaction, the effective execution of the principal judgment called for the creation of general measures at national level.

The Court also noted that the damage did not lend itself to precise calculation. Certain difficulties in assessing the

damage derived from the passage of time: the time element made the link between a breach of the Convention and the damage less certain.

In conclusion, the Court underlined the responsibility of the two States concerned to find a resolution to the Nagorno-Karabakh conflict. Pending a solution on the political level, the Court considered it appropriate to award the applicant an aggregate sum for pecuniary and non-pecuniary damage.

Principal facts

The applicant, Minas Sargsyan, an Armenian national, was born in 1929 and died in 2009 in Yerevan after having lodged his complaint with the European Court of Human Rights in 2006. His widow, Lena Sargsyan, his son, Vladimir, and his daughters, Tsovinar and Nina Sargsyan pursued the application on his behalf. Lena Sargsyan died in 2014. Vladimir and Tsovinar Sargsyan pursued the proceedings on the applicant's behalf.

Mr Sargsyan stated that he and his family, ethnic Armenians, used to live in the village of Gulistan, in the Shahumyan region of the Azerbaijan Soviet Socialist Republic, where they had a house and a plot of land. According to his submissions, his family had been forced to flee from their home in 1992 during the Nagorno-Karabakh conflict.

In a judgment delivered on 16 June 2015 the Grand Chamber dismissed the Government's preliminary objections and held that there had been continuing violations of Article 1 of Protocol No. 1 (protection of property), Article 8 (right to respect for home and private and family life) and Article 13 (right to an effective remedy) of the Convention. With respect to Article 1 of Protocol No. 1, it accepted that throughout the period within its jurisdiction, that is, from 15 April 2002 – the date on which Azerbaijan had ratified the Convention – refusing civilians, including the applicant, access to the village had been justified by safety

considerations given that it was situated in an area of military activity. However, it considered that the fact that the respondent State had not taken any alternative measures to restore the applicant's property rights or to provide him with compensation for the loss of their enjoyment had placed an excessive burden on him.

As the question of just satisfaction was not ready for decision, the Court reserved it and invited the parties to submit their written observations on that issue and to notify the Court of any agreement they might reach.

Complaints, procedure and composition of the Court

Relying on Article 41 (just satisfaction), the applicant sought just satisfaction in respect of pecuniary and non-pecuniary damage resulting from the violations found in the present case, as well as reimbursement of the costs and expenses incurred in the proceedings before the Court. The application was lodged with the European Court of Human Rights on 11 August 2006. On 11 March 2010 the Chamber to which the case had been assigned relinquished jurisdiction in favour of the Grand Chamber². The Armenian Government were granted leave to intervene as a third party. A first hearing was held on 15 September 2010.

In a decision of 14 December 2011, the Court declared the application partly admissible. A second Grand Chamber hearing on the merits of the case was held on 5 February 2014. The Grand Chamber delivered its judgment on the merits on 16 June 2015.

Today's judgment on just satisfaction was given by the Grand Chamber of 17 judges

Decision of the Court

Article 41

In its principal judgment the Court referred to the exceptional nature of the case, owing to a number of features.

The case related to an ongoing conflict situation and the parties had still not reached a peace agreement. Despite a ceasefire agreement concluded 23 years ago, the ceasefire was still not observed. Whereas the events that had led the applicant to flee his property and home had occurred in June 1992, the Republic of Azerbaijan had not ratified the Convention until ten years later, on 15 April 2002. The Court concluded that from the date of entry into force of the Convention in respect of Azerbaijan, the latter had been responsible for continuing violations of the applicant's rights under Article 1 of Protocol No. 1 and Articles 8 and 13 of the Convention.

The Court was thus dealing with a continuing situation which had its roots in the unresolved conflict over Nagorno-Karabakh and the surrounding territories and still affected a large number of individuals. More than 1,000 individual applications lodged by persons who had been displaced during the conflict were pending before the Court, slightly more than half of them being directed against Armenia and the remainder against Azerbaijan. The applicants in those cases represented just a small portion of the persons, estimated to exceed one million, who had had to flee during the conflict and had since been unable to return to their properties and homes or to receive any compensation.

The Court reiterated the importance of the principle of subsidiarity.

As to the political dimension, Armenia and Azerbaijan had committed themselves prior to their accession to the Council of Europe, to the peaceful settlement of the Nagorno-Karabakh conflict. By now, some 15 years had passed since the ratification of the Convention by the two States without a political solution of the conflict being in sight. The Court

could only underline that it was their responsibility to find a solution to the conflict on a political level.

With regard to the legal dimension, the Court reiterated that the principle of subsidiarity underpinned the Convention system. By virtue of Article 1 (obligation to respect human rights), the Contracting States had to secure the rights and freedoms guaranteed by the Convention to everyone within their jurisdiction, while, in accordance with Article 19 (establishment of the Court), it was for the Court to ensure the observance of the engagements undertaken by the States. It was precisely a failure on the part of the Government which obliged the Court to act as a court of first instance, establishing the relevant facts, evaluating evidence in respect of property claims and finally assessing monetary compensation.

Without prejudice to any compensation to be awarded as just satisfaction, the effective execution of the principal judgment called for the creation of general measures at national level. Guidance as to appropriate measures had been given in the principal judgment, where the Court had stated that pending a comprehensive peace agreement, it appeared particularly important "to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment".

The Court concluded overall that the applicant was entitled to compensation for certain pecuniary losses and for non-pecuniary damage, the pecuniary and non-pecuniary damage being closely connected in the present case.

The Court noted, however, that the damage sustained did not lend itself to precise calculation. Certain difficulties in assessing the damage derived from the passage of time: the

time element made the link between a breach of the Convention and the damage less certain. The violation of the right to respect for possessions was a continuing one and almost ten years had elapsed between the applicant's displacement from Gulistan and the entry into force of the Convention in respect of Azerbaijan, and some 15 years had elapsed thereafter. The Court considered that an award could still be made, notwithstanding the large number of imponderables involved.

Lastly, the Court reiterated that it was the responsibility of the two States concerned to find a resolution to the Nagorno-Karabakh conflict. Pending a solution on the political level, it considered it appropriate to award an aggregate sum for pecuniary and non-pecuniary damage.

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay Vladimir Sargsyan and Tsovinar Sargsyan EUR 5,000 jointly in respect of pecuniary and non-pecuniary damage, and EUR 30,000 in respect of costs and expenses.

Separate opinion

Judge Hüseyinov expressed a concurring opinion, which is annexed to the judgment.

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