



Azerbaijani refugees' rights violated by lack of access to their property located in district controlled by Armenia

In today's **Grand Chamber** judgment¹ in the case of **Chiragov and Others v. Armenia** (application no. 13216/05) the European Court of Human Rights held, by a majority, that there had been:

a continuing violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights;

a continuing violation of Article 8 (right to respect for private and family life) of the Convention; and

a continuing violation of Article 13 (right to an effective remedy).

The case concerned the complaints by six Azerbaijani refugees that they were unable to return to their homes and property in the district of Lachin, in Azerbaijan, from where they had been forced to flee in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh.

There are currently more than one thousand individual applications pending before the Court which were lodged by persons displaced during the conflict over Nagorno-Karabakh.

In the applicants' case, the Court confirmed that Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories and thus had jurisdiction over the district of Lachin.

The Court considered that there was no justification for denying the applicants access to their property without providing them with compensation. The fact that peace negotiations were ongoing did not free the Government from their duty to take other measures. What was called for was a property claims mechanism which would be easily accessible to allow the applicants and others in their situation to have their property rights restored and to obtain compensation.

Principal facts

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

The applicants submitted that they are Azerbaijani Kurds who lived in the district of Lachin, in Azerbaijan. They stated that they were unable to return to their homes and property there, after having been forced to leave in 1992 during the Armenian-Azerbaijani conflict over Nagorno-Karabakh.

At the time of the dissolution of the Soviet Union in December 1991, the Nagorno-Karabakh Autonomous Oblast ("the NKAO") was an autonomous province landlocked within the Azerbaijan Soviet Socialist Republic ("the Azerbaijan SSR"). There was no common border between the NKAO and the Armenian Soviet Socialist Republic ("the Armenian SSR"), which were separated by Azerbaijani territory, at the shortest distance by the district of Lachin, including a strip of land less than ten kilometres wide, referred to as the "Lachin corridor". In 1989 the NKAO had a population of

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

approximately 77% ethnic Armenians and 22% ethnic Azeris. In the district of Lachin, the majority of the population were Kurds and Azeris; only 5-6% were Armenians.

Armed hostilities in Nagorno-Karabakh started in 1988. In September 1991 – shortly after Azerbaijan had declared its independence from the Soviet Union – the Regional Council of the NKAO announced the establishment of the “Nagorno-Karabakh Republic” (“NKR”), consisting of the territory of the NKAO and the Shahumyan district of Azerbaijan. Following a referendum in December 1991 – boycotted by the Azeri population – in which 99.9% of those participating voted in favour of the secession of the NKR from Azerbaijan, the “NKR” reaffirmed 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 had 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. Negotiations for a peaceful solution have been carried out under the auspices of the Organization for Security and Co-operation in Europe (OSCE). However, no final political settlement of the conflict has so far been reached. The self-proclaimed independence of the “NKR” has not been recognised by any state or international organisation.

Prior to their accession to the Council of Europe in 2001, Armenia and Azerbaijan both gave undertakings to the Committee of Ministers and the Parliamentary Assembly, committing themselves to the peaceful settlement of the Nagorno-Karabakh conflict.

The district of Lachin, where the applicants lived, was attacked many times during the war. The applicants alleged that troops of both Nagorno-Karabakh and the Republic of Armenia were at the origin of the attacks. The Armenian Government maintained, however, that Armenia did not participate in the events, but that military action was carried out by the defence forces of Nagorno-Karabakh and volunteer groups. In mid-May 1992 Lachin was subjected to aerial bombardment, in the course of which many houses were destroyed. According to the applicants, on 17 May 1992, they were forced to flee from Lachin to Baku. Since then they have not been able to return to their homes and properties because of Armenian occupation.

In support of their claims that they had lived in Lachin for most of their lives until their forced displacement and that they had houses and land there, the applicants submitted various documents to the Court. In particular, all six applicants submitted: official certificates (“technical passports”), according to which houses and plots of land in the district of Lachin had been registered in their names; birth certificates, including of their children, and/or marriage certificates; and written statements from former neighbours confirming that the applicants had lived in their respective villages in the district of Lachin or in the town of Lachin.

Complaints, procedure and composition of the Court

The applicants complained that the loss of all control over, and of all potential to use, sell, bequeath, mortgage, develop and enjoy their properties in Lachin amounted to a continuing violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights. They also complained that their inability to return to the district of Lachin constituted a continuing violation of Article 8 (right to respect for home and private and family life) of the Convention. Furthermore, they complained that no effective remedies had been available to them in respect of their complaints, in breach of Article 13 (right to an effective remedy). Finally, they submitted that, in relation to the other complaints, they had been discriminated against on the basis of their ethnic origin and religious affiliation, in violation of Article 14 (prohibition of discrimination).

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 had been assigned relinquished jurisdiction in favour of the

Grand Chamber². The Azerbaijani Government intervened as a third party. A first Grand Chamber hearing in the case was held on 15 September 2010.

In a decision of 14 December 2011, the Court declared the complaints admissible. First, it held that the fact that negotiations within the OSCE about the Nagorno-Karabakh conflict – concerning the resettlement of refugees and internally displaced persons as well as compensation issues – were ongoing did not prevent the Court from examining the applicants' complaints. It rejected the Armenian Government's objection that the application fell outside the Court's temporal jurisdiction, finding that the applicants' lack of access to their homes and properties had to be considered a continuing situation which the Court could examine as from 26 April 2002, the date on which Armenia had ratified the Convention. The Court also dismissed the Armenian Government's objection that the application had been submitted out of time.

At the same time, the Court joined to the merits of the case the following questions: whether the Government of Armenia had effective control over the area concerned; whether the applicants had provided sufficient evidence of their identity and of their ownership of the property in question, and whether they could thus claim to be victims of the alleged violations of the Convention; and, whether effective remedies existed at national level which should have been used by the applicants.

A second Grand Chamber hearing on the merits of the case was held on 22 January 2014.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro** (Monaco),
Ineta **Ziemele** (Latvia),
Boštjan M. **Zupančič** (Slovenia),
Alvina **Gyulumyan** (Armenia),
Khanlar **Hajiyev** (Azerbaijan),
George **Nicolaou** (Cyprus),
Luis **López Guerra** (Spain),
Ganna **Yudkivska** (Ukraine),
Paulo **Pinto de Albuquerque** (Portugal),
Ksenija **Turković** (Croatia),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
Iulia Antoanella **Motoc** (Romania),

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

Decision of the Court

Admissibility

In its decision of December 2011, the Court had joined to the merits of the case three questions concerning the admissibility of the complaints.

Exhaustion of legal remedies at national level

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".

The Court dismissed the Armenian Government's objection that the applicants had failed to exhaust the legal remedies at national level. It found that the Government had not shown that there was any legal remedy – whether in Armenia or in the “NKR” – capable of providing redress in respect of the applicants' complaints. Furthermore, given that the Armenian Government had denied that their authorities had been involved in the events giving rise to the applicants' complaints or that Armenia exercised jurisdiction over Nagorno-Karabakh and the surrounding territories, it would not have been reasonable to expect the applicants to bring claims for restitution or compensation before the Armenian authorities. Finally, as no political solution to the conflict had been reached and military build-up in the region had escalated in recent years, it was not realistic that any possible remedy in the unrecognised “NKR” could in practice provide redress to displaced Azerbaijanis.

The applicants' victim status

The Court also dismissed the Armenian Government's objection concerning the applicants' victim status. It found that all six applicants had provided sufficient evidence to demonstrate that they had lived in the district of Lachin for major parts of their lives until being forced to leave, and that they had sufficiently substantiated that they had had houses and land there.

The Court observed that under the Soviet legal system, there was no private ownership of land, but citizens could own residential houses. Plots of land could be allocated to citizens for special purposes such as farming or construction of individual houses. In that case, the citizen had a “right of use”, limited to the specific purpose, which was protected by law and could be inherited. There was therefore no doubt that the applicants' rights in respect of the houses and land represented a substantive economic interest. In conclusion, at the time they had to leave the district of Lachin, the applicants held rights to land and to houses which constituted “possessions” within the meaning of Article 1 of Protocol No. 1. There was no indication that those rights had been extinguished afterwards; their proprietary interests were thus still valid. Moreover, their land and houses also had to be considered their “homes” for the purposes of Article 8.

Jurisdiction of Armenia

Finally, the Court dismissed the Armenian Government's objection that Armenia did not have effective control over the territory of Nagorno-Karabakh and the surrounding territories and thus lacked jurisdiction.

The Court noted in particular that numerous reports and public statements, including from members and former members of the Armenian Government, demonstrated that Armenia, through its military presence and by providing military equipment and expertise, had been significantly involved in the Nagorno-Karabakh conflict from an early date. Armenia's military support continued to be decisive for the control over the territories in question. Furthermore, it was evident from the facts established in the case that Armenia gave the “NKR” substantial political and financial support; its citizens were moreover required to acquire Armenian passports to travel abroad, as the “NKR” was not recognised by any State or international organisation. In conclusion, Armenia and the “NKR” were highly integrated in virtually all important matters and the “NKR” and its administration survived by virtue of the military, political, financial and other support given to it by Armenia. Armenia thus exercised effective control over Nagorno-Karabakh and the surrounding territories.

Article 1 of Protocol No. 1 (protection of property)

The Court had already found that the applicants held rights to land and to houses which constituted “possessions” for the purposes of Article 1 of Protocol No. 1. While the applicants' forced displacement from Lachin fell outside the Court's temporal jurisdiction, it had to examine whether they had been denied access to their property after the entry into force of the Convention in respect of Armenia in April 2002 and whether they had thereby suffered a continuous violation of their rights.

As the Court had found, there was no legal remedy, whether in Armenia or in the “NKR”, available to the applicants in respect of their complaints. Consequently, they had not had access to any legal means by which to obtain compensation for the loss of their property or to gain physical access to the property and homes left behind. Moreover, in the Court’s view, it was not realistic in practice for Azerbaijanis to return to Nagorno-Karabakh and the surrounding territories in the circumstances which had prevailed for more than twenty years after the ceasefire agreement. Those circumstances included in particular: a continued presence of Armenian and Armenian-backed troops; ceasefire breaches on the line of contact; an overall hostile relationship between Armenia and Azerbaijan; and do far no prospect of a political solution. There had accordingly been a continuing interference with the applicants’ rights under Article 1 of Protocol No. 1.

The Court considered that as long as access to the property was not possible, the State had a duty to take alternative measures in order to secure property rights, as was acknowledged by the relevant international standards issued by the United Nations and the Council of Europe.

The fact that peace negotiations under the auspices of the OSCE were ongoing – which included issues relating to displaced persons – did not free the Government from their duty to take other measures, especially having regard to the fact that the negotiations had been ongoing for over twenty years. It would therefore be important to establish a property claims mechanism which would be easily accessible to allow the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of the enjoyment of their rights. While the Court was aware that the Government of Armenia had had to provide assistance to hundreds of thousands of Armenian refugees and internally displaced persons, the protection of that group did not exempt the Government from its obligations towards Azerbaijani citizens as the applicants who had to flee as a result of the conflict.

In conclusion, as concerns the period under consideration, the Government had not justified denying the applicants access to their property without providing them with compensation for this interference. There had accordingly been a continuing violation of the applicants’ rights under Article 1 of Protocol No. 1.

[Article 8 \(right to respect for private and family life and the home\)](#)

For the same reasons as those which led to its findings under Article 1 of Protocol No. 1, the Court found that the denial of access to the applicants’ homes constituted an unjustified interference with their right to respect for their private and family lives as well as their homes. Accordingly, there had been and continued to be a breach of the applicants’ rights under Article 8.

[Article 13 \(right to an effective remedy\)](#)

The Court referred to its finding – with regard to the admissibility of the complaints – that the Armenian Government had failed to prove that a remedy capable of providing redress to the applicants in respect of their Convention complaints and offering reasonable prospects of success was available. For the same reasons, the Court concluded that there had been and continued to be a violation of their rights under Article 13.

[Article 14 \(prohibition of discrimination\)](#)

The Court considered that there was no need to examine the complaints separately under Article 14.

[Just satisfaction \(Article 41\)](#)

Having regard to the exceptional nature of the case, the Court, by a majority, held that the question of the application of Article 41 (just satisfaction) was not ready for decision. Consequently, it reserved that question for a later date.

Separate opinions

Judge Motoc expressed a concurring opinion. Judge Ziemele expressed a partly concurring, partly dissenting opinion. Judge Hajiyev expressed a partly dissenting opinion. Judges Gyulumyan and Pinto de Albuquerque each expressed a dissenting opinion. These separate opinions are annexed to the judgment.

The judgment is available in English and French.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.