



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

GRAND CHAMBER

CASE OF SARGSYAN v. AZERBAIJAN

(Application no. 40167/06)

JUDGMENT
(Just satisfaction)

STRASBOURG

12 December 2017

This judgment is final but it may be subject to editorial revision.

In the case of Sargsyan v. Azerbaijan,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President*,
Angelika Nußberger,
Linos-Alexandre Sicilianos,
Ganna Yudkivska,
Robert Spano,
Luis López Guerra,
Nebojša Vučinić,
Paul Lemmens,
Krzysztof Wojtyczek,
Ksenija Turković,
Egidijus Kūris,
Iulia Motoc,
Branko Lubarda,
Mārtiņš Mits,
Armen Harutyunyan,
Lətif Hüseynov,
Jolien Schukking, *judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 28 September 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 40167/06) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Armenian national, Mr Minas Sargsyan (“the applicant”), on 11 August 2006. The applicant died in 2009. Subsequently, the application was pursued by his widow, Ms Lena Sargsyan, born in 1936, and by his son Mr Vladimir Sargsyan and his daughters Ms Tsovinar and Nina Sargsyan, born in 1957, 1959 and 1966, respectively. Ms Lena Sargsyan died in 2014. Mr Vladimir Sargsyan and Ms Tsovinar Sargsyan pursued the proceedings on the applicant’s behalf.

2. The applicant, who had been granted legal aid, was represented by Ms N. Gasparyan and Ms K. Ohanyan, lawyers practising in Yerevan, and by Mr Philip Leach, director of the European Human Rights Advocacy Centre. The Azerbaijani Government (“the Government”) were represented by their Agent Mr Ç. Asgarov.

3. In a judgment delivered on 16 June 2015 (“the principal judgment”), the Grand Chamber dismissed the respondent Government’s preliminary objections of non-exhaustion of domestic remedies, lack of jurisdiction and responsibility, lack of the Court’s competence *ratione temporis* and lack of the applicant’s victim status in respect of his complaints relating to his relatives’ graves. The Grand Chamber held that there had been a continuing violation of Article 1 of Protocol No. 1. It also found continuing violations of Articles 8 and Article 13 of the Convention and held that no separate issue arose under Article 14 of the Convention. In particular, in respect of Article 1 of Protocol No. 1, the Court found as regards the period falling within its temporal jurisdiction, that is, from 15 April 2002, that although the impossibility for the applicant to have access to his property in Gulistan was justified by safety considerations, the respondent Government’s failure to take any alternative measures in order to restore his property rights or to provide him with compensation for the loss of their enjoyment placed a disproportionate burden on him (*Sargsyan v. Azerbaijan* [GC], no. 40167/06, ECHR 2015).

4. Under Article 41 of the Convention 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.

5. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within twelve months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (§ 283 and point 9 of the operative provisions of the principal judgment).

6. The parties having failed to reach an agreement, the applicant submitted his observations on 16 June and 13 December 2016 and the Government on 16 September and 24 October 2016.

7. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 and Rule 24 of the Rules of Court.

THE LAW

8. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

1. *The parties' submissions*

(a) **The applicant**

9. The applicant, an ethnic Armenian, born in 1929, was married and had four children. The family lived in Gulistan, in the Shahumyan region of the Azerbaijan Soviet Socialist Republic (present-day Goranboy region of the Republic of Azerbaijan), where the applicant had a two-storey house, outhouses and 2,160 sq. m of land of which 1,500 sq. m was a fruit and vegetable garden. He derived his income from his salary as a secondary school teacher and from farming and stock-breeding on his land. His wife, Lena Sargsyan, worked at the village's collective farm. The applicant and his wife had lived in Gulistan for most of their lives and their four children grew up there. They had to flee in June 1992 when the village came under attack during the military phase of the Nagorno-Karabakh conflict. Subsequently, the applicant and his wife lived as refugees in Yerevan. The applicant obtained Armenian citizenship in 2002. He died on 13 April 2009 (see §§ 29 and 34-40 of the principal judgment).

10. In his submissions of 21 May 2012, prior to the hearing on the merits, the applicant had requested restitution of his property, including the right to return to his property and home in Gulistan, compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses incurred in the proceedings before the Court (see § 281 of the principal judgment). In his observations following the delivery of the principal judgment he maintained his claims for compensation but noted the practical impossibility of a return to the village on account of the recent fighting and fragile ceasefire. He added that amounts calculated in American Dollars (USD) had been converted into euros (EUR) at the rate applicable when the initial submissions were made and asked the Court to take the considerable evolution of the exchange rate between these two currencies into account when making its final assessment.

11. The applicant claimed a total amount of EUR 374,814 as compensation in respect of pecuniary damage suffered as a result of his forced displacement from Gulistan in June 1992 and his inability to return to his property.

12. The claim for pecuniary damage was composed of compensation for the loss of his house and auxiliary buildings (EUR 16,654), loss of furniture (EUR 12,824), loss of livestock and fruit trees (EUR 1,644), loss of savings deposited in the Savings Bank of Azerbaijan on his and his wife's accounts (EUR 1,564), loss of income (EUR 151,260 for the years 1992 to 2012, namely loss of his and his wife's salaries and his pension of EUR 3,388 per year and loss of income derived from his land in Gulistan of EUR 4,175 per year) and reimbursement of additional rental and living expenses incurred

(in a total amount of EUR 99,447 for the years 1992 to 2012), offset against the monies received in pension and family allowance from the Armenian Government. Furthermore he claimed loss of future income and future living costs of his wife Lena Sargsyan (EUR 91,421).

13. In respect of the house, the applicant referred to the Court's findings in the principal judgment according to which his house still existed (*ibid.*, §§ 197-198). He provided three different valuations: firstly, the valuation in USSR roubles contained in the technical passport of the house dated May 1991, converted into USD at June 1992 rates; secondly, an estimation provided by Lena Sargsyan based on the argument that owing to the devaluation of the USSR rouble in 1991, the cadastral value in the technical passport converted into USD at June 1992 rates did not accurately reflect the house's value and thirdly, a valuation by the Real Estate Cadastre at the Government of Armenia provided in April 2012 comparing the applicant's house with similar houses in a comparable village in Armenia estimating its value at USD 21,403 (or EUR 16,654 at the time of submission of the claim in May 2012).

14. In respect of the loss of income derived from his land in Gulistan, the applicant indicated that he used to keep livestock and to grow fruit and vegetables on his land. Part of the produce was for the family's own consumption and part of it was sold. He estimated the loss under this head at EUR 4,175 per year by converting the value of the produce from USSR roubles to USD and then to EUR. In respect of additional rental and living expenses incurred, he submitted a number of receipts for the payment of housing fees for an apartment in a dormitory in Yerevan. According to the statement of Lena Sargsyan, attached to the submissions of 21 May 2012, that apartment had been allocated to the applicant and her in 2001 by the Armenian Refugee Committee and they had later been able to privatise it. In addition the applicant submitted bills for electricity and water and a list provided by the Armenian social services concerning the payment of pension and family allowance from 2003 to 2012. In respect to other heads of pecuniary damage, the applicant also provided details as to the method of calculation and a number of supporting documents.

15. Furthermore, the applicant noted that the Court had also provided guidance as to the method and principle for redressing the pecuniary damage suffered by individuals in his situation by referring to relevant international standards, in particular the "United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons" ("the Pinheiro principles") and Resolution No. 178 (2010) of the Parliamentary Assembly of the Council of Europe on "Solving property issues of refugees and displaced persons" (§ 238 of the principal judgment).

16. In respect of non-pecuniary damage, the applicant's next of kin, who are pursuing the application after his death, stated that that claim was made on their own behalf and on behalf of the applicant. They claimed a total

amount of EUR 190,000, referring to anguish and feelings of helplessness and frustration experienced by themselves and by the applicant over the many years during which they were unable to enjoy their property and home in Gulistan and to visit the graves of their relatives there.

17. Finally, the applicant contested the Government's view that the impossibility to have access to his property and home was due to the occupation by Armenia of significant parts of Azerbaijani territory, noting that this view was at variance with the Court's findings in the principal judgment (*ibid.*, §§ 134-137 and 151).

(b) The Government

18. For their part, the Government argued that restitution was not possible. They referred to the Court's finding that the applicant still had a house in Gulistan (§§ 197-198 of the principal judgment) but underlined that according to the Court's assessment the refusal to grant the applicant, or any civilian, access to the village was justified by the security situation (*ibid.*, § 233). They could therefore not provide restitution of the applicant's property but had to take alternative measures to secure his property rights (*ibid.*, § 234).

19. The Government, referring to the Court's finding in the principal judgment according to which the practical difficulties in exercising their authority in Gulistan had to be taken into account when assessing the proportionality of the acts and omissions complained of (*ibid.*, § 150), argued that a similar approach should be taken in respect of just satisfaction. Compensation sums awarded should be in a reasonable proportion to the degree of their responsibility in regard to the infringement of the applicant's property rights. In addition, the measures taken by the Azerbaijani authorities in favour of a huge number of internally displaced persons had to be taken into account in the assessment of the applicant's claims.

20. In respect of pecuniary damage the Government submitted that part of the applicant's claims related to facts which fell outside the Court's competence *ratione temporis*. In particular, they argued that they could not be held responsible for the applicant's displacement in June 1992 or any damage to the house or to his other belongings during the armed conflict.

21. On the basis of these main propositions, the Government contested the applicant's claims under the various heads of pecuniary damage in detail. They argued in particular that the applicant had claimed compensation for the value of the house itself but, in their view, he had failed to submit claims in respect of the continuing violation of his property rights due to the loss of use of his property in Gulistan.

22. As to the claim for loss of income, the Government noted that Lena Sargsyan, the applicant's widow, had not herself been an applicant before the Court. Consequently, the loss of her income could not be validly claimed. Moreover, the claims for loss of the applicant's income could not

be pursued beyond his death. The Government also contested the claim for reimbursement of additional rental and living expenses and future living expenses, pointing out that according to Lena Sargsyan's statement which was attached to the applicant's submissions of 21 May 2012, she and the applicant had been provided with an apartment in Armenia in 2001 and had received a pension and family allowance from the Armenian Government.

23. In respect of non-pecuniary damage, the Government considered that the finding of a violation constituted in itself sufficient just satisfaction. They conceded that refugees suffered non-pecuniary damage due to the impossibility to have access to their property, their homes and their relatives' graves. However, in the present case, that impossibility was intrinsically linked to the occupation of a significant part of Azerbaijani territory and to the resumption, in April 2016, of hostilities along the Line of Contact, involving heavy shelling of towns and villages *inter alia* in the Goranboy region, in which Gulistan is situated.

24. In addition, they questioned the surviving family members' standing to seek an award in respect of non-pecuniary damage on their own behalf and expressed the view that any claim for non-pecuniary damage on the applicant's behalf had become extinguished with his death.

2. *The Court's assessment*

(a) **Introductory remarks**

25. When reserving the issue of just satisfaction for a later stage in the principal judgment, the Court referred to the exceptional nature of the present case (*ibid.*, § 283).

26. That exceptional nature is owing to a number of features. One is that the present case relates to an ongoing conflict situation. The active military phase in the Nagorno-Karabakh conflict took place in 1992-94 but, despite a cease-fire agreement concluded in May 1994 and negotiations conducted in the framework of the OSCE Minsk Group, no peace agreement has been reached (for a more detailed description of the background and current situation, see §§ 14-28 of the principal judgment). Twenty-three years later, breaches of the ceasefire agreement continue to occur. As both parties have pointed out in their observations on just satisfaction, violence has recently escalated along the Line of Contact, most notably during the military clashes in early April 2016.

27. Another particular aspect of the case is that, whereas the events which led the applicant to flee his property and home occurred in June 1992, the respondent State, the Republic of Azerbaijan, ratified the Convention ten years later, on 15 April 2002. Having thus no jurisdiction *ratione temporis* over events pre-dating 15 April 2002, the Court concluded that the applicant still has valid proprietary rights to a house and land in Gulistan (§§ 198 and 205 of the principal judgment). From the date of entry into force of the

Convention, it found Azerbaijan responsible for continuing violations of the applicant's rights under Article 1 of Protocol No. 1 and Articles 8 and 13 of the Convention (ibid., §§ 241-242, 260-261 and 273-274).

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

29. In this connection, the Court considers it appropriate to emphasise once more the principle of subsidiarity. In the present case it has both a political and a legal dimension.

30. As to the political dimension, the Court has already referred to the undertakings given by Armenia and Azerbaijan prior to their accession to the Council of Europe committing themselves to the peaceful settlement of the Nagorno-Karabakh conflict (§ 76 of the principal judgment). By now, some fifteen years have passed since the ratification of the Convention by Armenia and Azerbaijan without a political solution of the conflict being in sight. The Court can only underline that it is the responsibility of the two States involved to find a solution on a political level (see, *mutatis mutandis*, *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, and 2 others, §§ 255-256, 3 October 2008, *Demopoulos and Others, v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 85, ECHR 2010).

31. Coming to the legal dimension, the Court reiterates that the principle of subsidiarity underpins the Convention system (*Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 134, ECHR 2014, and the cases cited therein). This principle is embodied in Article 1 of the Convention, according to which the Contracting States shall secure the rights and freedoms guaranteed by the Convention to everyone within their jurisdiction, while according to Article 19, it is for the Court to ensure the observance of the engagements undertaken by the States in the Convention and the Protocols thereto. Furthermore, the principle underlies the requirement for applicants to exhaust domestic remedies pursuant to Article 35 § 1 and the corresponding obligation for Contracting States under Article 13 to provide effective remedies for breaches of the Convention (*Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV; *Demopoulos and Others*, cited above, § 69). The principle of subsidiarity also guides the Court's approach in dealing with systemic violations of the Convention when applying the pilot judgment procedure developed under Article 46 (see, for instance, *Ališić*

and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia [GC], no. 60642/08, § 143, ECHR 2014).

32. Moreover, as it has done in other cases arising out of unresolved conflict situations, or in cases revealing systemic violations, the Court cannot emphasise enough that it is not a court of first instance. It does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of specific facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *mutatis mutandis*, *Demopoulos and Others*, cited above, § 69, and *Ališić and Others*, cited above, §§ 142-143).

33. It is precisely the Government's failure to comply with its accession commitments as well as with its obligations under the Convention which obliges the Court in the present case to act as a court of first instance, establishing relevant facts some of which date back many years, evaluating evidence in respect of property claims and finally assessing monetary compensation. All this is to be seen against the background that the present application is examined as a leading case while hundreds of similar cases against Azerbaijan are still pending before the Court.

34. Without prejudice to any compensation to be awarded as just satisfaction in the present case, the effective and constructive execution of the principal judgment calls for the creation of general measures at national level. Guidance as to appropriate measures has been given in the principal judgment, where the Court stated, *inter alia*, that “pending a comprehensive peace agreement, it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicant and others in his situation to have their property rights restored and to obtain compensation for the loss of their enjoyment” (*ibid.* § 238).

(b) General principles on just satisfaction

35. The Court reiterates its case-law according to which a judgment where the Court finds a breach generally imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*Kurić and Others*, cited above, § 79). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. The discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States pursuant to Article 1 of the Convention to secure the rights and freedoms guaranteed. If the nature of the breach allows for *restitutio in integrum*, it is for the respondent State to effect it, the Court

having neither the power nor the practical possibility of doing so itself. If, on the other hand, national law does not allow - or allows only partial - reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (*Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B; *Kurić and Others*, cited above, § 80, and the cases referred to therein). In this connection, the role of the Committee of Ministers, under Article 46 § 2 of the Convention, to supervise the execution of the Court's judgments should be emphasised (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, §§ 84-88, ECHR 2009). Nevertheless, the Court is mindful of the fact that some situations – especially those involving long-standing conflicts – are not, in reality, amenable to full reparation.

36. As regards claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention. In appropriate cases this may include compensation in respect of loss of earnings (*Kurić and Others*, cited above, § 81).

37. In regard to losses related to real property, where no deprivation of property has taken place but the applicant has been denied access to it and therefore the possibility to use and enjoy it, the Court's general approach is to assess the loss suffered with reference to the annual ground rent calculated as a percentage of the market value of the property, that could have been earned during the relevant period (*Loizidou v. Turkey* (Article 50), 28 July 1998, § 33, *Reports* 1998-IV).

38. A precise calculation of the sums necessary to make reparation in respect of the pecuniary losses suffered by the applicant may be prevented by the inherently uncertain character of the damage flowing from the violation. An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved, the more uncertain the link becomes between the breach and the damage. The question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary losses, that it is necessary to award to the applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (*Kurić and Others*, cited above, § 82).

39. Furthermore the Court reiterates that there is no express provision for non-pecuniary or moral damage. In *Varnava and Others v. Turkey* ([GC], nos. 16064/90 and 8 others, § 224, ECHR 2009) and *Cyprus v. Turkey* ((just satisfaction) [GC], no. 25781/94, § 56, ECHR 2014) the Court confirmed the following principles which were gradually developed in its case-law. Situations where the applicant has suffered evident trauma, whether physical or psychological, pain and suffering, distress, anxiety, frustration, feelings of injustice or humiliation, prolonged uncertainty,

disruption to life, or real loss of opportunity can be distinguished from those situations where the public vindication of the wrong suffered by the applicant, in a judgment binding on the Contracting State, is an appropriate form of redress in itself. In some situations, where a law, procedure or practice has been found to fall short of Convention standards this is enough to put matters right. In other situations, however, the impact of the violation may be regarded as being of a nature and degree as to have impinged so significantly on the moral well-being of the applicant as to require something further. Such elements do not lend themselves to a process of calculation or precise quantification. Nor is it the Court's role to function akin to a domestic tort mechanism court in apportioning fault and compensatory damages between civil parties. Its guiding principle is equity, which above all involves flexibility and an objective consideration of what is just, fair and reasonable in all the circumstances of the case, including not only the position of the applicant but the overall context in which the breach occurred. Its non-pecuniary awards serve to give recognition to the fact that moral damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage.

40. Finally, the Court observes that, depending on the specific circumstances of the case, it may be appropriate to make an aggregate award for pecuniary and non-pecuniary damage (*Centro Europa 7 S.r.l. and Di Stefano, v. Italy* [GC], no. 38433/09, §§ 218-222, ECHR 2012).

(c) Award of damages in the present case

(i) General considerations

41. In finding that there has been a continuing violation of Article 1 of Protocol No. 1 the Court accepted that refusing civilians, including the applicant, access to Gulistan was justified by safety considerations given that it was situated in an area of military activity. However, it considered that as long as access to the applicant's property was not possible, the State had a duty to take alternative measures in order to secure his property rights (§§ 233-234 of the principal judgment). It noted that the respondent Government had to provide for a large community of internally displaced persons but found that the protection of this group did not exempt the Government entirely from its obligations towards another group, namely Armenians like the applicant who had to flee during the conflict (*ibid.*, §§ 239-240). The Court concluded that the impossibility for the applicant to have access to his property in Gulistan without the Government taking any alternative measures to provide him with compensation for the loss of their enjoyment, placed and continued to place an excessive burden on him (*ibid.*, § 241). The Court relied on the same considerations in finding that there has been a continuing violation of Article 8 of the Convention given the impossibility for him to have access to his home and to his relatives' graves

in Gulistan without the Government taking any alternative measures to address his rights or to provide him at least with compensation for the loss of their enjoyment (ibid., §§ 259-261). Finally, there had been and continued to be no available effective remedy in respect of these violations (§ 273).

42. The applicant had initially requested restitution of his property, including the right to return to his property and home in Gulistan, but has not upheld this claim following the principal judgment, noting the impossibility of a return to the village on account of the prevailing security situation (see paragraph 10 above). Thus, an award of compensation is the appropriate just satisfaction in the present case.

43. The Court reiterates that it is the finding that the applicant still has valid property rights in respect of his house and land in Gulistan that brought the case within the Court's competence *ratione temporis* (§§ 205 and 215 of the principal judgment) from 15 April 2002. It follows, firstly, that a period of almost ten years during which the continuing situation complained of existed, falls outside the Court's temporal jurisdiction and that any damage suffered by the applicant before 15 April 2002 is not directly related to the violations found by the Court and therefore cannot be compensated under Article 41 of the Convention. Secondly, as the applicant has not been deprived of his property rights, compensation cannot be awarded for the loss of his house and land as such, but only for the loss of use of his property.

(ii) *Pecuniary damage*

(a) The applicant's house

44. Regarding the applicant's house, the Court notes that according to its findings in the principal judgment it still existed in April 2002 when the Convention entered into force in respect of Azerbaijan but in a badly damaged state (ibid., §§ 197-198). The applicant claims compensation for the value of the house as it stood when he had to flee from Gulistan in June 1992. However, the Court cannot award the applicant compensation for the damage to the house that occurred prior to the entry into force of the Convention (contrast, *Doğan and Others v. Turkey* (just satisfaction), nos. 8803/02 and 14 others, §§ 52-53, 13 July 2006, in which the Convention was in force at the time of the applicants' eviction from their village in south-east Turkey and the Court awarded them compensation for the deterioration of the houses in subsequent years during which they were prevented from returning). Therefore, no award can be made under this head.

(β) Loss of furniture, livestock and fruit trees

45. Insofar as the applicant claims compensation for loss of furniture, and for the loss of livestock and fruit trees, the Court observes that almost ten years elapsed between the applicant's flight from Gulistan in June 1992 and the entry into force of the Convention in April 2002. During such a considerable period, any furniture would at the very least have been badly damaged if it had not become unusable at all. The same goes for livestock which must have perished long before the entry into force of the Convention and fruit trees which must have suffered considerably from ten years of neglect. There is no element in the case which would give reason to draw a different conclusion. Thus, in respect of these items, there is no causal connection between the damage claimed and the continuing violations found in the principal judgment. Consequently, no award can be made under this head.

(γ) Loss of salaries, pensions and savings

46. Furthermore, the applicant claimed compensation for loss of income from salaries and pensions since 1992. No award can be made for the period pre-dating 15 April 2002. As regards the period after the entry into force of the Convention, the Court considers that there is no causal link between the violations found in the principal judgment and the damage alleged. The losses claimed are not directly related to the impossibility for the applicant to have his property rights restored or to obtain compensation for the loss of their enjoyment, but are rather linked to his displacement from Gulistan in 1992 and to the overall consequences of the conflict. Similarly, a causal link between the loss of savings deposited in the Savings Bank of Azerbaijan and the violations found in the principal judgment is missing. Moreover, these losses were not the object of the application. They were mentioned for the first time in the applicant's submissions on just satisfaction of 21 May 2012. In sum, no award can be made for loss of salaries, pensions and savings.

(δ) Loss of income from the applicant's land and additional rental and living expenses

47. The Court considers that compensation for pecuniary damage may, in principle, be awarded in respect of loss of income from the applicant's land for the period after the entry into force of the Convention in respect of Azerbaijan. It would also accept, again in respect of that period, that the applicant incurred certain additional rental and living expenses, although these would have to be offset against the monies received in Armenia. Nonetheless, the Court notes that the assessment of pecuniary damage under these heads is also burdened with many uncertainties and difficulties.

48. Some of these difficulties are linked to the fact that the underlying conflict is still unresolved and to the particular situation of Gulistan. Since

the entry into force of the Convention until the present date, Gulistan has been a deserted village in which most buildings have been dilapidated. It is situated between the opposing forces of Azerbaijan and the “NKR” (§§ 134 and 197 of the principal judgment). In these circumstances it is not possible to obtain any valid data for the loss of use of the applicant’s property. It does not appear appropriate either to assess the loss of use with reference to the annual ground rent, calculated as a percentage of the market value of the property, that could have been earned in the period after the entry into force of the Convention (contrast, *Loizidou v. Turkey* (Article 50), cited above, § 33).

49. Another difficulty, closely linked to the first one, concerns the lack or inaccessibility of documentation. The main document submitted by the applicant in respect of his house and land in Gulistan is the technical passport of the house established in May 1991 (see §§ 154 and 192 of the principal judgment), that is, still at the time of the Soviet Union. The technical passport contains no valuation in respect of the land. This can partly be explained by the fact that, at the time when the plot of land was allocated to the applicant, there was no private ownership of land under the Soviet legal system, it being given to him instead with a “right of use” (for a more detailed description of the rights to land at that time see §§ 201-203 of the principal judgment). Concerning the period falling within the Court’s competence *ratione temporis*, there is no documentation relating to the value of the property or any income to be derived from it.

(e) Conclusion in respect of pecuniary damage

50. In conclusion, the Court considers that some award of pecuniary damages can be made only in respect of two heads, namely the loss of income from the applicant’s land and additional rental and living expenses. While the Court accepts that the applicant, who had lived in his house in Gulistan and derived part of his income from farming his land, must have incurred additional living expenses in Armenia, the uncertainty as to the assessment of the loss of income from the applicant’s land also prevents any precise calculation of the difference in living expenses. The assessment is further complicated by the fact that it involves comparing economic conditions in two different countries which must, moreover, have evolved considerably over time. Having regard to all these elements, the Court considers that the pecuniary damage sustained by the applicant does not lend itself to precise assessment.

(iii) Non-pecuniary damage

51. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the protracted, unresolved situation, the insecurity about the fate of his house and other property and the graves of his relatives in Gulistan, and the ensuing emotional suffering and distress.

52. The Court considers that, in the present case, the finding of a violation does not constitute in itself sufficient just satisfaction for the non-pecuniary damage suffered. As was noted in the principal judgment, the measures taken by the respondent Government to provide assistance to hundreds of thousands of internally displaced persons do not exempt the respondent Government from its obligations towards another group, namely Armenians like the applicant who had to flee during the conflict. It appears that, so far, no property claims mechanism or other measures have been put in place by the Government which could benefit persons in the applicant's situation (see paragraph 34 above as well as the considerations in the principal judgment, §§ 238-240). Consequently, the case differs from the case of *Doğan and Others* (cited above, § 61), where the Court considered that, in view of the measures taken by the authorities of the respondent State to remedy the situation of the applicants and other internally displaced persons, the principal judgment in itself constituted sufficient just satisfaction for any non-pecuniary damage arising from the violations of Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1.

(iv) Entitlement of family members to compensation

53. In reply to the Government's submissions, the Court reiterates that family members who are entitled to pursue the application following the applicant's death may also take the applicant's place as regards claims for just satisfaction, with regard to both pecuniary damage (see, *Malhous v. the Czech Republic* [GC], no. 33071/96, §§ 67-68, 12 July 2001) and non-pecuniary damage (see, for instance, *Ječius v. Lithuania*, no. 34578/97, §§ 41 and 109, ECHR 2000-IX; *Avci and Others v. Turkey*, no. 70417/01, § 56, 27 June 2006; contrast, however, with the case of *Malhous*, cited above, § 71, where the violation was not considered to have affected the successor personally). Furthermore, the Court has granted non-pecuniary damages to the son of an applicant in a case pursued by him concerning unreasonable length of pension proceedings, not only for the period when the applicant was alive but also for the period after her death when the domestic proceedings were continued by the son as the applicant's heir (*Ernestina Zullo v. Italy* [GC], no. 64897/01, §§ 115-116 and 148-149, 29 March 2006).

54. The Government appear to argue that the late applicant's family members cannot claim compensation for the period subsequent to his death in April 2009. In view of the particular nature of the violations at stake, namely continuing violations of the applicant's rights under Article 1 of Protocol No. 1 and of Articles 8 and 13 of the Convention, the Court considers that it would be unduly formalistic to exclude from the award of compensation the period subsequent to the applicant's death. As has been shown above, in a case concerning the unreasonable length of proceedings, and thus a violation which has an element of continuity, the award of just

satisfaction is not necessarily limited to the period before the applicant's death. The position may be different where the application is not pursued by the late applicant's next of kin but by the administrator of his estate (*Solomonides v. Turkey* (just satisfaction), no. 16161/90, §§ 42-43 and 47, 27 July 2010) or where the applicant's next of kin, who pursue the application, are not personally affected by the violation found (see *Malhous*, cited above, § 71).

55. In the present case, the Court reiterates that the applicant and his family lived in Gulistan where the applicant derived his income from his salary as a secondary school teacher and from farming and stock-breeding on his land and his wife worked at the village's collective farm. They thus formed a household economic unit. The applicant and his wife had lived in Gulistan for most of their lives until their forced displacement in June 1992. Consequently, the applicant's wife was in exactly the same situation as the applicant and was personally affected by the loss of the enjoyment of the applicant's property and home in Gulistan and the lack of effective remedies in that regard. To a lesser extent this also applies to the applicant's adult children. Moreover, in finding that there had been and continued to be breaches of the applicant's Convention rights, the Court included the period subsequent to his death (principal judgment, §§ 241-242, 260-261 and 273). In coming to that conclusion, it found that the applicant still held valid property rights in respect of his house and land (*ibid.*, § 205). In the absence of any indication to the contrary, the applicant's widow and, after her death in 2014, their children must be considered successors to these rights. Having regard to all these factors, the Court finds that the applicant's next of kin who pursued the application on his behalf may be awarded compensation for the full period examined in the present case.

(v) Overall conclusion

56. As follows from the above considerations, the applicant is entitled to compensation for certain pecuniary losses and for non-pecuniary damage. The pecuniary and non-pecuniary damage are, in the Court's view, closely connected. For the reasons set out above, the damage sustained does not lend itself to precise calculation (see paragraphs 39, 48-50). Further difficulties in the assessment derive from the passage of time. As has been acknowledged by the Court (see paragraph 48 above), the time element makes the link between a breach of the Convention and the damage less certain. This consideration is particularly prominent in the present case, concerning a continuing violation of the applicant's property rights, in which almost ten years had already elapsed between the applicant's displacement from Gulistan and the entry into force of the Convention and some fifteen years have elapsed thereafter. An award may still be made notwithstanding the large number of imponderables involved. The level of

just satisfaction to be awarded must be determined at the Court's discretion, having regard to what it finds equitable.

57. In conclusion, the Court has regard to the respondent State's primary duty to make reparation for the consequences of a breach of the Convention and underlines once more the responsibility of the two States concerned to find a plausible resolution to the Nagorno-Karabakh conflict. Pending a solution on the political level, it considers it appropriate in the present case to award an aggregate sum for pecuniary and non-pecuniary damage. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 covering all heads of damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

1. The parties' submissions

58. The applicant claimed the following amounts for costs incurred in the proceedings before the Court: 37,062.50 pounds sterling (GBP) for 247 hours and 5 minutes of work at a rate of GBP 150/hour performed by his London lawyers and EUR 38,500 for 384 hours and 20 minutes of work at a rate of EUR 100/hour performed by his Armenian representatives. He submitted detailed time-sheets in respect of each of the lawyers concerned. In addition he claimed compensation for cash expenses of his London lawyers of GBP 348.33 and of his Armenian representatives of EUR 1,737. In respect of the expenses claimed, he submitted supporting documents.

59. The applicant argued that according to the Court's case-law representation by more than one lawyer, and also representation by lawyers practising in different jurisdictions could be justified. In such cases the Court had also accepted that fee levels differed from one Contracting State to another and that instructing lawyers from different jurisdictions could involve the need to translate key documents of the case file.

60. The Government considered that the applicant's claims were excessive. While recognising the need for representation by at least one Armenian lawyer and a human rights lawyer familiar with the proceedings before the Court, they contested that the applicant's representation by a team of lawyers located both in London and in Armenia was necessary. They requested the Court to carry out a careful assessment of the applicant's claims under the head of costs and expenses.

2. The Court's assessment

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses found to have been actually and necessarily incurred and to be reasonable as to quantum (see, among many

others, *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 223, and *Ališić and Others*, cited above, § 158).

62. In view of the nature of the present case, the Court accepts the need for representation by two Armenian lawyers and a United Kingdom lawyer specialising in the international protection of human rights (*Kurt v. Turkey*, 25 May 1998, § 179, *Reports* 1998-III). It further notes that it is not unusual that counsel for the parties are assisted by advisors at the public hearing or for carrying out research.

63. Furthermore, the Court acknowledges that the case raised complex issues of fact and law. It observes in particular that it required the collection of evidence, the holding of two public hearings before the Grand Chamber and the submission of several sets of observations. It also raised important legal issues and served as a leading case for hundreds of follow-up cases. Nonetheless, the Court considers that the total amount claimed in respect of costs is excessive. Finally, the Court notes that the applicant received EUR 3,940.64 by way of legal aid.

64. Having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 30,000 to cover all the applicant's costs and expenses.

C. Default interest

65. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds*

(a) that the respondent State is to pay Mr Vladimir Sargsyan and Ms Tsovinar Sargsyan jointly, within three months, the following amounts,

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable to them, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and notified in writing on 12 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Johan Callewaert
Deputy to the Registrar

Guido Raimondi
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Hüseyinov is annexed to this judgment.

G.R.
J.C.

CONCURRING OPINION OF JUDGE HÜSEYNOV

While I disagree with the findings of the Grand Chamber in its principal judgment in this case, this is not an issue under review at this stage of the proceedings. Not having been part of the judicial formation that adopted the principal judgment, I am bound by it as a matter of law. Considering Article 41 under those circumstances, I have to vote in favour of the present judgment.