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

THIRD SECTION

DECISION

Application no. 49169/16
Nushiravan AMRAHOV
against Armenia

The European Court of Human Rights (Third Section), sitting on 26 February 2019 as a Chamber composed of:

Vincent A. De Gaetano, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Armen Harutyunyan,
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 August 2016,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Nushiravan Amrahov, is an Azerbaijani national, who was born in 1971 and lives in Tapgaragoyunlu in the region of Goranboy. He was represented before the Court by Mr A. Baghirov, a lawyer practising in Baku.

A. General background

2. 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 remains hostile and tense and there have been recurring breaches of the ceasefire agreement (see further Chiragov v. Armenia [GC], no. 13216/05, §§ 12-31, 16 June 2015). The most serious such breach started during the night between 1 and 2 April 2016 and lasted until 5 April and involved heavy military clashes close to the border between the "NKR" and Azerbaijan (sometimes referred to as the "Four-Day War"). Further clashes took place later that month. Estimates of casualties vary considerably; official sources indicate 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.

B. The circumstances of the case

3. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The situation in Tapgaragoyunlu

4. On 2 April 2016, at around 3 a.m., the Armenian military forces began shelling Azerbaijani towns and villages located along the line of contact. As from 4 a.m., the village of Tapgaragoyunlu, situated a few hundred metres away from the line of contact, was under intensive shelling from the Martakert region on the "NKR" side.

2. The circumstances of the applicant

5. On 2 April 2016, in the early hours of the morning, the applicant noticed that Armenian military forces were shelling the village. In order to secure the family's safety, he took members of his family to the neighbouring village and then returned home. In the evening of that day, a shell exploded in the yard of his house. The windows and roof of the house were damaged.

6. The applicant was not injured and continued to live with his family in his house.

COMPLAINTS

7. The applicant complained, under Articles 2 and 3 of the Convention, that the actions of the attacking forces had put his life at risk and caused him anguish and distress.

8. He also claimed under Article 8 of the Convention that his right to respect for his family life and home had been infringed.

9. Under Article 1 of Protocol No. 1 to the Convention the applicant complained that his house had been damaged during the shelling, thereby depriving him of the peaceful enjoyment of his property.

10. Invoking Article 13 of the Convention in conjunction with Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1, he maintained that there was no effective remedy in Armenia for his complaints.

11. Finally, under Article 14 of the Convention in conjunction with Articles 2, 3, 8 and 13 of the Convention and Article 1 of Protocol No. 1, the applicant alleged that the military attacks had been directed against Azerbaijanis due to their ethnic and national origin.

THE LAW

A. The applicant's submissions

12. In support of his complaints, the applicant submitted to the Court evidence of an individual nature, consisting of an Azerbaijani ID card indicating his birth year and his residence in Tapgaragoyunlu, a statement issued by the local executive authority certifying his and his family's residence in the village, a report drawn up on 8 April 2016 by an official emergency commission stating that 10 sq. m of window glass and 26 sq. m of iron roof sheets had been damaged as a result of the shelling, statements of two neighbours confirming the applicant's account of events and the damage to the house, and two photographs of the house.

B. The Court's assessment

1. General considerations

13. The Court recalls that its role is subsidiary and that it must be cautious in taking on the role of a first-instance tribunal of fact, unless it is unavoidable by the circumstances of the case (see, for example, *Aslakhanova and Others v. Russia*, nos. 2944/06 and 4 others, § 96, 18 December 2012).

14. Moreover, the proceedings before the Court are adversarial in nature. It is therefore for the parties to substantiate their arguments by providing the Court with the necessary factual evidence. Whereas the Court is responsible for establishing the facts, it is up to the parties to provide active assistance by supplying it with all the relevant information (see, for instance, *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25; and *Lisnyy and Others v. Ukraine and Russia* (dec.), nos. 5355/15, 44913/15 and 50853/15, § 25, 5 July 2016).

15. In general, the Court applies a "beyond reasonable doubt" standard of proof in its assessment of evidence. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many authorities, *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII). Especially when it comes to allegations made under Articles 2 and 3 of the Convention, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336; and *Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII).

16. At the same time, the Court acknowledges that cases concerning armed conflicts may raise particular difficulties. It has had regard to the circumstances in which applicants have been compelled to leave their homes, abandoning them when they came under military attack (see, for example, *Saveriades v. Turkey* (no. 16160/90, § 18, 22 September 2009; and *Chiragov and Others*, cited above, § 143). Furthermore, in exceptional cases, a lack of documentary evidence may be accepted if the applicant convincingly explains that it has not been possible to obtain and submit it (see, *mutatis mutandis*, *Lisnyy and Others*, cited above, § 30; and *Kudukhova v. Georgia*, nos. 8274/09 and 8275/09, § 28, 20 November 2018).

17. The question whether an applicant has substantiated ownership of property within the meaning of Article 1 of Protocol No. 1 or the existence of a home under Article 8 of the Convention has arisen in a number of cases before the Court. Such claims have been accepted on the basis of both primary and prima facie documentation issued by the relevant authorities, including copies of title deeds, certificates of registration, purchase contracts, "technical passports", affirmations of ownership, extracts from housing inventories or from land or tax registers and, in special circumstances, certificates of residence. Additionally, the applicant's residence in a house or flat constituting his or her home has been established through prima facie evidence such as maintenance receipts, proof of mail deliveries and statements of witnesses (see *Chiragov and Others*, cited above, §§ 130, 133-134, 141 and 143, with further references).

18. However, if an applicant does not produce any evidence of title to property or of residence, the complaints are generally bound to fail (see, for instance, *Lordos and Others v. Turkey*, no. 15973/90, § 50, 2 November

2010; see also the conclusion as to some applicants in the case of *Kerimova and Others v. Russia*, nos. 17170/04, 20792/04, 22448/04, 23360/04, 5681/05 and 5684/05, 3 May 2011).

19. When an applicant claims that his or her property has been damaged or destroyed, at least prima facie evidence of such impairment should be submitted. In *Damayev v. Russia* (no. 36150/04, § 108-111, 29 May 2012) the Court considered that the applicant, complaining about the destruction of his home, should have provided at least a brief description of the property in question. Since no documents or detailed claims were submitted, his complaint was found to be unsubstantiated.

20. In sum, while the difficulties arising in times of armed conflict are taken into account and may lead to a lowering of the normal probative requirements, an applicant must still provide adequate substantiation of his or her claims.

2. Complaint under Article 1 of Protocol No. 1 to the Convention

21. The applicant complained about damage to his house under Article 1 of Protocol No. 1, the first paragraph of which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

22. In line with the above general principles, it was for the applicant to produce concrete evidence of at least prima facie nature showing both that the property was part of his possessions and that it had been damaged as a result of the shelling in April 2016. However, while he furnished the Court with evidence confirming that the house in Tapgaragoyunlu in which he and his family lived had been damaged and detailing the extent of that damage, he did not provide any proof that he actually owned the house in question.

23. In this connection, it should be noted that many other applicants from Tapgaragoyunlu who have complained to the Court have submitted ownership certificates to prove that they own the property allegedly damaged.

24. Moreover, the applicant, who has been represented by legal counsel, did not make any submissions as to the reasons for which he failed to submit relevant documents showing that the house in question was part of his possessions. Nor did he inform the Court of any attempts he might have made in order to obtain at least fragmentary documentary evidence to substantiate this.

25. In these circumstances, the Court finds that the applicant's complaint under Article 1 of Protocol No. 1 is not sufficiently substantiated and that, consequently, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. Complaints under Articles 2 and 3 of the Convention

26. The applicant asserted that the actions of the Armenian military forces had put his life at risk and caused him anguish and distress. He relied on Articles 2 and 3 of the Convention which, in so far as relevant, provide the following:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally ... ."

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

27. The Court recognises that the situation of an armed conflict, in particular the presence of an applicant in the area during heavy bombing and concurrent danger to his or her life, may raise issues under Article 2. Notably, an immediate danger to life caused by the conduct of State agents can engage that provision even in situations when no death occurs (see, for example, *Makaratzis v. Greece* [GC], no. 50385/99, § 55, ECHR 2004-XI; and *Trévalec v. Belgium*, no. 30812/07, §§ 55-61, 14 June 2011). The same applies to situations of indiscriminate use of lethal force against the civilian population, if the level of danger the applicant was exposed to was sufficiently immediate and severe (see *Abuyeva and Others v. Russia*, no. 27065/05, §§ 200 and 203, 2 December 2010). In such a situation, a prima facie claim by the applicant may be sufficient to shift the burden of proof to the respondent Government to provide documentary evidence or a satisfactory and convincing explanation as to how the events in question unfolded (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 184, ECHR 2009).

28. In the present case, an examination of the merits of the complaint under Article 2 might therefore have been warranted had the applicant provided the Court with prima facie evidence that the level of danger to which he was exposed was of such seriousness as to pose an immediate threat to his life. However, such evidence was not submitted by the applicant. Although he stated that a shell exploded in his yard and that his house was damaged, the damage – as it appears on the photographs submitted – must be considered to have been relatively limited. Moreover, the evidence provided does not substantiate that the applicant, who was apparently at home when the shell exploded, ran any immediate risk to life or limb.

29. Turning to the applicants' complaints under Article 3 of the Convention, it should be reiterated that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case,

such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, for example, *Selçuk and Asker v. Turkey*, 24 April 1998, § 76, *Reports of Judgments and Decisions* 1998-II) The Court has previously found, in cases where the premeditated destruction of homes by heavy artillery was deliberately targeted against civilians' homes and carried out before their eyes, that the threshold of severity required for engaging that provision was reached (see, among other authorities, ibid., §§ 77-78; and *Ayder and Others v. Turkey*, no. 23656/94, §§ 106 and 109-110, 8 January 2004). However, it has also held that when such an attack is not carried out with the purpose of humiliating and causing mental suffering to the civilians, the threshold of severity will generally not be reached (see *Esmukhambetov and Others v. Russia*, no. 23445/03, §§ 187-188, 29 March 2011). Nevertheless, the absence of a purpose of subjecting the applicants to inhuman treatment or of causing moral suffering cannot conclusively rule out a violation of Article 3 (see *Benzer and Others v. Turkey*, no. 23502/06, § 212, 12 November 2013).

30. In the present case, the Court acknowledges that the situation in which the applicant found himself could have caused him a considerable level of anguish and distress. As noted above, however, the house in which he lived was not destroyed but sustained rather limited damage and he continued to live in it with his family after the military attack. Furthermore, the submissions do not convincingly show that the nature or aim of the attack was to humiliate the civilian population and cause them mental suffering.

31. The Court reiterates that it is not a tribunal of facts, and cannot, without appropriate assistance from the applicants, establish the factual account of complex events, such as the situation of an armed conflict. It concludes that the applicant failed to provide the Court with convincing prima facie evidence that the events which he experienced were of such severity as to raise issues under Articles 2 and 3 of the Convention. It follows that these complaints are also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

4. Complaint under Article 8 of the Convention

32. The applicant further claimed, under Article 8 of the Convention, that his right to respect for his family life and home had been infringed. This provision reads as follows:

> "Everyone has the right to respect for his private and family life, his home and his correspondence."

33. A forced flight from one's home as a consequence of an armed conflict can, in certain circumstances, involve a breach of the displaced person's rights under Article 8 (see, for instance, *Chiragov and Others*,

cited above, §§ 206-207). In the present case the Court notes, however, that, the applicant himself did not leave Tapgaragoyunlu save for a short interval when he moved members of his family to safety in a neighbouring village. It transpires from the applicant's submissions that the family was later reunited, but it is not clear how long they were separated. In any event, there is no indication that that separation lasted for more than a limited period of time (cf. *Kudukhova*, cited above, § 37).

34. While it is reasonable to assume that even the family members' short refuge in another village due to the hostilities and the resultant separation of the family caused the applicant some level of stress and discomfort, the Court concludes that the discomfort did not amount to an interference with his right to respect for his family life and home under Article 8 of the Convention. Consequently, this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

5. Complaints under Articles 13 and 14 of the Convention

35. The applicant finally maintained that there was no effective remedy in Armenia for his complaints and that the military attacks had been directed against Azerbaijanis due to their ethnic and national origin. He relied on Articles 13 and 14 of the Convention, which read as follows:

Article 13

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

36. Having regard to its above findings that the complaints under Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention are manifestly ill-founded, the Court concludes that the applicant had no arguable claim of a violation of those provisions. It follows that the complaint under Article 13 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4. With reference to the same findings, the Court further considers that the case reveals no appearance of discrimination of the applicant. Consequently, his complaint under Article 14 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 21 March 2019.

Fatoş Aracı Deputy Registrar	Vincent A. De Gaetano President