



## Judgments and decisions of 27 October 2016

The European Court of Human Rights has today notified in writing five judgments<sup>1</sup> and 26 decisions<sup>2</sup>: two Chamber judgments are summarised below; for three others, in the cases of *Shukurov v. Azerbaijan* (application no. 37614/11), *Les Authentiks et Supras Auteuil 91 v. France* (nos. 4696/11 and 4703/11), and *Kanaginis v. Greece* (no. 27662/09), separate press releases have been issued; for two decisions, in the cases of *Kendristakis and Others v. Greece* (no. 47975/11) and *Nationaldemokratische Partei Deutschlands, NPD v. Germany* (no. 55977/13), separate press releases have been issued; the remaining 24 decisions can be consulted on [Hudoc](#) and do not appear in this press release. *The judgments below are available only in English.*

### Ter-Sargsyan v. Armenia (application no. 27866/10)

The applicant, Vaghinak Ter-Sargsyan, is an Armenian national who was born in 1970 and lived in Armavir, Armenia, prior to his imprisonment. The case concerned his trial and conviction in Armenia for a murder committed in Kazakhstan.

In October 2000, a man was stabbed by two attackers at a café in Kostanay, Kazakhstan. He died shortly afterward. The Kazakh authorities opened an investigation, with Mr Ter-Sargsyan and his friend, Mr B.M., as the main suspects. The authorities obtained eyewitness statements from 11 witnesses. On 21 January 2004, the Kazakh authorities charged Mr Ter-Sargsyan with murder.

On 5 November 2004, Mr Ter-Sargsyan was arrested in Armenia, but was later released after Armenia and Kazakhstan failed to reach an agreement on conditions for his extradition. B.M. was still in Kazakhstan, and, in May 2006, a Kazakh regional court found him guilty of murder in relation to the incident.

On 8 July 2008, Mr Ter-Sargsyan was charged with murder under Armenian law. During the investigation by the Armenian authorities, Mr Ter-Sargsyan filed a motion to confront six of the witnesses who had given statements to the Kazakh authorities. This was dismissed, with the investigator holding that those witnesses had reinstated their statements against Mr Ter-Sargsyan during the investigation, as well as at B.M.'s trial. After Mr Ter-Sargsyan was indicted, he applied to have his case remitted for further investigation, in order to confront six of the witnesses about the differences between their written statements and his account. It appears that the Southern Criminal Court of Armenia, to whom the application was directed, never responded.

At Mr Ter-Sargsyan's trial, none of the 11 witnesses appeared. The Government claims that the trial court sent summons to all 11 of the witnesses residing in Kazakhstan, but three were uncontactable and the other eight submitted declarations as to why they could not attend Mr Ter-Sargsyan's trial. Mr Ter-Sargsyan claims that none of the witnesses received proper summons and that the victim's

<sup>1</sup> Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

<sup>2</sup> Inadmissibility and strike-out decisions are final.

widow had attended a preparatory hearing before his trial and submitted declarations from only five of the witnesses. Furthermore, during the trial Mr Ter-Sargsyan requested to examine video recordings from the crime scene which had been admitted in evidence, but this request was rejected.

On 19 June 2009, the Regional Court found Mr Ter-Sargsyan guilty of murder. In its reasons for the verdict, the court listed the statements from the 11 witnesses and the video evidence of the crime scene as evidence relied upon to establish Mr Ter-Sargsyan's guilt.

Mr Ter-Sargsyan filed an appeal. The Criminal Court of Appeal upheld his conviction, holding that the witnesses in question had been properly summoned and had given valid reasons for not appearing. On 12 November 2009, the Court of Cassation dismissed a further appeal for lack of merit.

Relying upon Article 6 § 1 (right to a fair trial) and Article 6 § 3(d) (right to obtain attendance and examination of witnesses) of the European Convention on Human Rights, Mr Ter-Sargsyan complained that he had not been given an opportunity to examine the witnesses who had provided evidence against him, and that the video recordings – which had been part of the evidence against him – had also not been examined in court.

**Violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d)** - on account of Mr Ter-Sargsyan's inability to question the witnesses against him

**Violation of Article 6 § 1** - on account of the non-examination of video recordings

**Just satisfaction:** EUR 3,100 (non-pecuniary damage)

## Vardanyan and Nanushyan v. Armenia (no. 8001/07)

The applicants, Yuri Vardanyan, Shushanik Nanushyan and Artashes Vardanyan, are Armenian nationals who were born in 1936, 1948, and 1987, respectively, and who live in Yerevan, Armenia. They are a family who lived at 13 Byuzand Street, Yerevan. The case concerned the expropriation of their house and the plot of land and related civil proceedings.

By an agreement concluded in 1933 Yuri Vardanyan's grandparents had transferred ownership to the house and the plot of land at 13 Byuzand Street to a State agency. In August 1994, Yuri Vardanyan obtained a court judgment recognising that the agreement concluded in 1933 had been invalid. No appeal was made against this judgment, and it became final. However, the Supreme Court quashed this judgment in February 1995. Yuri Vardanyan later filed a claim seeking recognition of his inheritance and ownership rights in respect of the property in question. This was upheld by a decision of the Presidium of the Armenian Supreme Court in 1997, and the Plenary Session of the Court of Cassation in 1998. Yuri Vardanyan also brought a claim to oust third parties who owned premises on his land, and was successful.

In August 2002, the Government included Byuzand Street in the list of property to be expropriated for State needs. The management of construction works on Byuzand Street was subcontracted to Vizkon Ltd. In November 2005, Vizkon brought a claim against the national real estate registry, seeking to invalidate Yuri Vardanyan's title to his plot. The claim was successful at first instance, but the ruling of the first instance court was overturned by the Court of Appeal. Vizkon appealed to the Court of Cassation.

The rapporteur of the case at the Court of Cassation, Judge H., presented a settlement proposal under which Yuri Vardanyan, who acted as a third party in the proceedings, would receive compensation for revocation of his ownership. Yuri Vardanyan declined the offer. At a subsequent hearing, Judge M., the Chairman of the Civil Chamber of the Court of Cassation, encouraged the parties to reach a settlement. Yuri Vardanyan still refused to settle. At a further hearing, Judge M. once again encouraged Yuri Vardanyan to reach a friendly settlement, suggesting that he had refused a reasonable offer. However, Mr Vardanyan persisted in his reluctance to reach a settlement.

On 28 July 2006, the Court of Cassation quashed the Court of Appeal's decision, finding that there had never been any judicial recognition of Yuri Vardanyan's ownership of the plot, and referred the matter back to the Court of Appeal.

The Court of Appeal eventually allowed the claim to invalidate Yuri Vardanyan's ownership, following the reasoning of the Court of Cassation. Mr Vardanyan made a further appeal to the Court of Cassation, but this was declared inadmissible in March 2007.

Meanwhile, the Yerevan Mayor's Office brought eviction proceedings against Yuri Vardanyan after he refused to accept a compensation proposal from Vizkon. The first instance court upheld the claim and Mr Vardanyan appealed. The night before the appeal hearing, Yuri Vardanyan fell ill and was admitted to hospital. He promptly sought an adjournment of the hearing due to his health, attaching a hospital certificate. On 25 September 2006, the Court of Appeal proceeded to hold the hearing in his absence, and to dismiss the appeal. Mr Vardanyan lodged a further appeal with the Court of Cassation, but this was not admitted for examination for lack of merit on 16 January 2007. A further application for a stay of the enforcement of the court's decision was dismissed on 6 July 2007, since the authorities had already demolished the house on 11 June 2007.

Shushanik Vardanyan and Artashes Vardanyan had also lodged an appeal on points of law against the Court of Appeal's decision of 25 September 2006, arguing that they should have been made parties to the proceedings. However, their appeal was found inadmissible on 24 July 2007 as being without merit.

Relying in particular on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property), the applicants argued that they had been arbitrarily deprived of their plot of land and house, and had been denied a fair trial in the ensuing civil proceedings. In particular, they complained that the domestic courts had violated the principle of the finality of judgments; the judge presiding over the hearings before the Court of Cassation in the proceedings concerning the land had not been impartial, as he had tried to compel Yuri Vardanyan to sign a settlement agreement; and that the Court of Appeal had held a hearing in Yuri Vardanyan's absence.

**Violation of Article 6 § 1** – as far as the principles of legal certainty, impartiality and equality of arms are concerned

**Violation of Article 1 of Protocol No. 1**

**Just satisfaction:** The Court held that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision and reserved it for examination at a later date.

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**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.