

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

FOURTH SECTION

CASE OF HOVHANNISYAN v. ARMENIA

(Application no. 16480/13)

JUDGMENT

STRASBOURG

26 March 2024

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



In the case of Hovhannisyan v. Armenia,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Tim Eicke, *President*,
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 16480/13) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 27 February 2013 by an Armenian national, Mr Henrik Hovhannisyan, who was born in 1938 and lived in Yerevan ("the applicant"). He was represented by Mr K. Mezhlumyan, a lawyer practising in Yerevan;

the decision to give notice of the application to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters;

the parties' observations;

Having deliberated in private on 5 March 2024,

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

SUBJECT MATTER OF THE CASE

1. In 1992 the local authorities of Arevadasht village (executive committee of the Council of Peoples' Deputies) allotted a plot of land to the applicant. He was issued a temporary certificate of ownership which stated that it had to be exchanged for a certificate of state registration of the title.

2. In 1997 the local authority issued a certificate confirming that the applicant had been allotted a plot of land and that, since 1991, he had made a number of improvements - drilled a well, built an apartment, cattle shed and poultry yard and planted orchards of fruit trees.

3. On 3 October 2011 the applicant asked the State Real Estate Registry to register his title to the given land. His request was refused on the grounds that by virtue of Government decree no. 1555-N of 18 November 2004 ("the Decree") the State had transferred its ownership to land, which included the plot of land in question, to the local community of Arevadasht village, which had then alienated it to a third party.

4. The applicant filed a claim with the Administrative Court seeking to have the Decree declared partly invalid in so far as the plot of land that had been allotted to him was concerned, arguing that the Government had no authority to alienate the plot of land which constituted his property. To support his claim, the applicant relied on Article 13 of the Land Code of 1991, according to which allotment of land at the relevant time was carried out by executive committees of the Council of Peoples' Deputies, as well as

Article 52 § 4 of the Land Code of 2001, which stated that official documents granting rights in respect of land issued or obtained before 6 May 1999 preserved their legal force, were not subject to re-registration and were considered a lawful basis for transactions. He also relied on Article 28 of the Constitution of 1995, which required a judicial procedure for deprivation of property and Article 1 of Protocol No. 1 to the Convention.

5. On 16 January 2012 the Administrative Court refused to admit the applicant's claim for lack of jurisdiction on the grounds that the applicant had failed to mention any legal act of higher legal force with which the Government decree was allegedly incompatible, as required by Article 135 of the Code of Administrative Procedure ("the CAP").

6. Upon the applicant's appeal, the Administrative Court of Appeal quashed the decision of 16 January 2012 and remitted the case for a new examination finding that the Administrative Court should have returned the claim to the applicant in order to correct the shortcomings of his claim instead of refusing to admit it.

7. On 2 May 2012 the Administrative Court, referring to the Court of Appeal's findings (see paragraph 6 above) refused to admit (returned) the claim. The applicant filed an appeal.

8. At the same time, on 1 June 2012 the applicant filed an amended claim, raising the same arguments (see paragraph 4 above).

9. On 8 June 2012 the Administrative Court refused to admit the amended claim finding that the applicant had failed to correct the shortcomings of his initial claim. The applicant appealed against that decision as well.

10. On 11 July 2012 the Administrative Court of Appeal upheld the decision of 2 May 2012 (see paragraph 7 above). It found that the applicant had failed to comply with the main requirement of Article 135 of the CAP in that he had failed to indicate any legal act of higher legal force with which the contested Decree was allegedly incompatible. In so far as the applicant had referred to the Constitution and the Convention, the appellate court noted that disputes on the constitutionality of Government decrees were within the competence of the Constitutional Court while Article 135 of the CAP concerned only domestic law and not international treaties, including the Convention.

11. On 23 July 2012 the Administrative Court of Appeal upheld the decision of 8 June 2012 on the same grounds namely that the applicant had failed to correct the shortcomings of his claim (see paragraph 9 above).

12. The applicant's appeals on points of law against the decisions of 11 and 23 July 2012 (see paragraphs 10 and 11 above) were declared inadmissible for lack of merit by the Court of Cassation in its decisions of 8 and 22 August 2012 respectively. The decision of 22 August 2012 was served on the applicant on 5 September 2012.

13. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of lack of access to a court to contest the Decree

whereby he had been deprived of his land and of the resultant breach of his property rights.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The Court notes at the outset that the applicant died in 2015 after the introduction of the application. After the applicant's death, his son, Mr Hrachya Hovhannisyan, expressed his wish to pursue the proceedings on his behalf. The Government did not object to the latter's standing to pursue the present application. Having regard to the submitted documents and the relevant case-law principles, the Court accepts that Mr Hrachya Hovhannisyan has the requisite *locus standi* to pursue the proceedings in the deceased applicant's name (see *Mnatsakanyan v. Armenia*, no. 2463/12, §§ 39-43, 6 December 2022). For convenience, it will, however, continue to refer to Mr Henrik Hovhannisyan as the applicant in the present judgment (ibid., § 43).

15. The Government contended that Article 6 was not applicable to the proceedings in question. The interference with the applicant's property rights, if any, had occurred when the given land had been sold by the village community to third parties or when the State Real Estate Registry had refused to register his title. The outcome of the administrative proceedings initiated by the applicant could not directly affect his property rights, if any, in respect of the given land considering that the potential annulment of the Decree would have merely resulted in the return of the property at issue to the State. For the same reasons, the Government also claimed that the applicant had failed to exhaust the domestic remedies.

16. The applicant submitted that contesting the Decree before the administrative courts was the only means of restoring his breached property rights. His claim seeking the invalidation of the Decree in so far as it concerned the plot of land he claimed constituted his property was therefore the appropriate means for reclaiming his property from the village community which had in its turn alienated it to a third party.

17. The Court notes that by virtue of the Decree the plot of land, which had been allotted to the applicant in 1992 (see paragraph 1 above), was transferred to the possession of the local community of Arevadasht village which had then alienated the given plot of land to a third party (see paragraph 3 above). According to the applicant, he had been informed thereof only in 2011 when he had sought State registration of his title to the land (apparently he had failed to exchange the temporary ownership certificate issued to him in 1992 for a definitive one).

18. The Court further notes that in his claim introduced before the Administrative Court the applicant referred the relevant articles of the Land

Codes of 1991 and 2001 to essentially argue that his failure to obtain earlier registration of his title to the land had not deprived him of ownership, hence the land in question could not have been considered State property for the Government to have been entitled to allot it as such to the local community (see paragraph 4 above).

19. For Article 6 § 1 in its civil limb to be applicable, there must be a "dispute" ("contestation" in French) over a right which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, lastly, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among many authorities, *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022, with further references). In determining whether there was a legal basis for the right asserted by the applicant, the Court needs to ascertain only whether the applicant's arguments were sufficiently tenable, not whether he would necessarily have been successful had he been given access to a court (ibid. § 268).

20. Given the circumstances described above (see paragraph 17 above), as well as the domestic legal provisions that had been referred to in support of the applicant's claim (see paragraph 4 above), the Court considers that the applicant could arguably claim that his ownership of land in question had not ceased due to his failure to re-register it. At the same time, the Court cannot agree with the Government that contesting the Decree - which had allocated the given land to the village community in the first place - was inappropriate and could not have directly affected the applicant's allegedly breached property rights. It is not clear on what basis the applicant could have sought the annulment of the subsequent alienation of the land to a third party had he not sought to have the alleged irregularity of the initial transfer thereto established. Neither have the Government submitted relevant domestic case-law proving that, without having sought such annulment, the mere contestation by the applicant of the refusal to register his title to the given plot of land (see paragraph 3 above) would have been an effective remedy.

21. In these circumstances, the Court dismisses the Government's objections as to the inapplicability of Article 6 and non-exhaustion of domestic remedies.

22. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

23. The general principles concerning the right of access to a court have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79 and 96-99, 5 April 2018), *Kart v. Turkey* ([GC], no. 8917/05, § 79,

ECHR 2009 (extracts)), and *Arrozpide Sarasola and Others v. Spain* (nos. 65101/16 and 2 others, § 98, 23 October 2018).

24. The Court observes that Article 135 § 2 of the CAP provided at the material time that the administrative courts had jurisdiction over disputes concerning the compatibility of normative decrees of the Government with normative acts of higher legal force (except the Constitution).

25. The applicant's administrative claim seeking partial invalidation of the Decree was eventually not admitted for examination on the merits on the grounds that he had failed to indicate any legal act of higher legal force with which the Decree was allegedly incompatible, in breach of the requirements of Article 135 of the CAP (see paragraphs 10-12 above) despite the fact that the applicant had relied on Article 13 of the Land Code of 1991 and Article 52 § 4 of the Land Code of 2001 (see paragraph 4 above) to argue that the Government had breached his property rights by virtue of the Decree. At the same time, the applicant had also relied on Article 28 of the Constitution and Article 1 of Protocol No. 1 to the Convention to support his claim (ibid.). While the finding of the Administrative Court of Appeal that the determination of the alleged unconstitutionality of Government Decrees was not within the competence of administrative courts (see paragraph 10 above) appears to be in line with Article 135 § 2 of the CAP, it is not clear on what basis it refused to examine the alleged non-compliance of the impugned Decree with the requirements of Article 1 of Protocol No. 1 to the Convention considering that under Article 6 of the Constitution – in the wording that was then in force – ratified international conventions formed a constituent part of the legal system of the Armenia and had precedence over domestic legal provisions that were not in line with them.

26. The Court reiterates that the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Kart*, cited above, § 79). In the light of this well-established case-law principle, the Court finds that the administrative courts' refusal to admit the applicant's claim for examination on the merits impaired the very essence of his right of access to a court to contest a normative act adopted by the Government which had allegedly breached his property rights.

27. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

28. The applicant complained that he had been deprived of his property unlawfully and that owing to the fact that he had been denied access to a court

to contest the Decree, his rights under Article 1 of Protocol No. 1 to the Convention had been breached.

29. The Government argued that the plot of land in question did not constitute the applicant's "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

30. The Court notes that the applicant's complaint under Article 1 of Protocol No. 1 is closely linked to that examined under Article 6 § 1 of the Convention regarding access to a court and that it cannot speculate on the outcome of the proceedings had it not been for the violation it has found. Having regard to its conclusion under Article 6 of the Convention that the applicant was unduly prevented from securing the determination of his administrative claim, and without prejudice to the question whether the applicant had a possession within the meaning of Article of Protocol No. 1, the Court considers that it is not necessary to rule on his complaint under this Article (see *Petko Petkov v. Bulgaria*, no. 2834/06, § 38, 19 February 2013, and *Adilovska v. North Macedonia*, no. 42895/14, § 38, 23 January 2020).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicant claimed 28,343 euros (EUR) in respect of pecuniary damage and EUR 12,000 in respect of non-pecuniary damage. He further claimed EUR 1,536 in respect of costs and expenses incurred before the Court.

32. The Government contested those claims.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As regards non-pecuniary damage, it reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which he or she would have been had this provision not been disregarded (see *Petko Petkov*, cited above, § 42). The Court therefore estimates that the most appropriate form of redress would be the reopening of the proceedings at the domestic level should the applicant so request (*Paykar Yev Haghtanak Ltd v. Armenia*, no. 21638/03, §§ 57-58, 20 December 2007). Considering, however, that the applicant must have sustained non-pecuniary damage which cannot be sufficiently compensated by the reopening of the proceedings, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

34. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 1,090 for legal costs in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that it is not necessary to rule on the alleged violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,090 (one thousand and ninety euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 26 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu	Tim Eicke
Acting Deputy Registrar	President