

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

THIRD SECTION

DECISION

Application no. 19940/05
by Grigori GHARIBYAN and Others
against Armenia

The European Court of Human Rights (Third Section), sitting on 15 November 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 1 June 2005,

Having regard to the declaration submitted by the respondent Government on 10 September 2010 requesting the Court to strike the application out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Grigori Gharibyan, Ms Gohar Gharibyan and Ms Anna Gharibyan, are Armenian nationals who were born in 1946, 1954 and 1985 respectively and live in Yerevan. They were represented before the Court by Mr A. Grigoryan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their

Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. The applicants jointly owned a flat which measured 44.1 sq. m. and was situated at 25 Byuzand Street, Yerevan. According to the applicants, the flat in question constituted a separate one-storey house. They further alleged that they owned the underlying basement and plot of land, even though their ownership right was not formally registered.

4. On 1 August 2002 the Government adopted Decree no. 1151-N, approving the expropriation zones of the real estate situated within the administrative boundaries of the Kentron District of Yerevan to be taken for State needs for town-planning purposes, having a total area of 345,000 sq. m. Byuzand Street was listed as one of the streets falling within such expropriation zones. A special body, the Yerevan Construction and Investment Project Implementation Agency (hereafter, the Agency) was set up to manage the implementation of the construction projects.

5. On 7 September 2004 the applicants' flat was valued upon the request of the Agency by a valuation organisation, Artin Enterprise Ltd. The market value of the flat was found to be 16,350 United States dollars (USD).

6. By a letter of 14 January 2005 the Agency informed the applicants that their flat was subject to expropriation and that it had been valued by an independent licensed organisation at USD 16,350. An additional sum of USD 12,638.55 was offered to the applicants as a financial incentive if they signed an agreement within five days.

7. It appears that the applicants did not accept the offer, not being satisfied with the amount of compensation offered.

8. On an unspecified date the Agency lodged a claim against the applicants, seeking to oblige them to sign an agreement on taking of their flat for State needs and to have them evicted.

9. On 1 March 2005 the Kentron and Nork-Marash District Court of Yerevan granted the Agency's claim, ordering the applicants to sign the agreement for the total amount of USD 16,350.

10. On an unspecified date a third person who also owned a house in the applicants' yard lodged a claim against the Mayor's Office, seeking to have his property rights in respect of the underlying plot of land recognised.

11. On 10 March 2005 the applicant Grigori Gharibyan (hereafter, the first applicant) joined this claim. He also sought to have the market value of the property belonging to him and other applicants reassessed, taking into account the plot of land.

12. On 15 March 2005 the applicants lodged an appeal against the judgment of the District Court.

13. On 30 March 2005 the Civil Court of Appeal granted the Agency's claim upon appeal.

14. On 13 April 2005 the applicants lodged an appeal on points of law which they supplemented on 2 May 2005. In their appeal, they argued, *inter alia*, that the deprivation of their property was not prescribed by law as required by Article 28 of the Constitution.

15. On 5 May 2005 the Kentron and Nork-Marash District Court of Yerevan dismissed the first applicant's claim of 10 March 2005. It appears that the first applicant lodged an appeal against this judgment but took no further action following the appeal proceedings.

16. On 26 May 2005 the Court of Cassation upheld the judgment of the Court of Appeal of 30 March 2005.

B. Relevant domestic law

17. For a summary of the relevant domestic provisions see the judgment in the case of *Minasyan and Semerjyan v. Armenia* (no. 27651/05, §§ 23-35, 23 June 2009).

COMPLAINTS

18. The applicants complained under Article 1 of Protocol No. 1 and Article 8 of the Convention that the deprivation of their flat had not been prescribed by law. They further complained under the same Article that no compensation had been awarded to them for the remaining part of their property, namely the basements and the plot of land.

19. The applicants complained under Articles 6 and 13 of the Convention that the domestic courts had not been independent and that the Court of Appeal had refused to stay the expropriation proceedings.

THE LAW

A. Deprivation of the applicants' flat

20. The applicants complained about the deprivation of their flat and invoked Article 1 of Protocol No. 1 and Article 8 of the Convention. The Court considers that their complaint falls to be examined under Article 1 of Protocol No. 1 which, in so far as relevant, 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."

21. Following unsuccessful friendly settlement negotiations the Government informed the Court, by letter dated 10 September 2010, that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

22. The declaration provided as follows:

> "...the Government hereby wish to express – by way of the unilateral declaration – its acknowledgement of the deprivation of the applicants' possessions not in compliance with the requirements of Article 1 of Protocol No. 1 [to] the Convention.
>
> In these circumstances, and having regard to the particular facts of the case, the Government, declare that they offer to give the applicants under the right of ownership a flat measuring **115.6 sq. m** and situated at 4/6 Amiryan Street, apt 63, Yerevan. The ownership certificate of the flat has already been submitted to the Court. The Government consider this declaration to be reasonable in the light of the Court's case law.
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> The offer referred to above, is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be finalized within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the [Convention].
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> ...
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> Consequently, the Government are of the opinion that the circumstances of the above application may lead to the conclusion set out in sub-paragraph (c) of Article 37 § 1 of the Convention, thus that it is no longer justified to continue the examination of the application in the light of the Government's unilateral declaration."

23. In a letter of 27 October 2010 the applicants objected against the Government's declaration by referring to various aspects of the friendly settlement negotiations. They further alleged that the flat in question did not exist, since it had been sold to a third person. They claimed that they had been informed about this when they visited the building on 26 October 2010 together with a representative of the relevant construction company.

24. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. It points out that, according to Article 38 § 2 of the Convention, friendly-settlement negotiations are confidential and that Rule 62 § 2 of the Rules of Court further stipulates that no written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in contentious proceedings (see *Meriakri v. Moldova* (striking out), no. 53487/99, § 28, 1 March 2005). The Court will therefore proceed on the basis of the Government's unilateral declaration and the parties' observations submitted outside the framework of friendly-settlement

negotiations, and will disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement (see *Estate of Nitschke v. Sweden*, no. 6301/05, § 36, 27 September 2007).

25. The Court notes that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

26. It also notes that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

27. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; also *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

28. The Court has already established in a case against Armenia the nature and extent of the obligations which arise for the respondent State under Article 1 of Protocol No. 1 as regards the deprivation of property in the centre of Yerevan for the purposes of implementation of town-planning projects under the Government Decree no. 1151-N (see *Minasyan and Semerjyan*, cited above, §§ 69-72). The Court notes that the circumstances of the present case and the nature of the applicants' complaint are almost identical. It further notes that the applicants' allegation that the flat in question had been sold to a third person was not substantiated with any evidence.

29. In such circumstances, having regard to the nature of the admissions contained in the Government's declaration, as well as the nature of the proposed compensation which the Court finds reasonable in the circumstances of the case, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

30. Moreover, in light of the above considerations, and in particular given the existing case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

31. As regards the question of implementation of the Government's declaration, the Court points out that the present ruling is without prejudice to any decision it might take, in case of a failure by the Government to comply with its undertakings, to restore the present application to the list of cases pursuant to Article 37 § 2 of the Convention (see *E.G. v. Poland* (dec.), no. 50425/99, § 29, ECHR 2008-... (extracts)).

B. Other alleged violations of the Convention and Protocol No. 1

32. The applicants also complained under Article 1 of Protocol No. 1 that no compensation was awarded to them for the underlying basements and plot of land. They further raised a number of complaints under Articles 6, 8, 13 and 14 of the Convention.

33. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the applications in this part are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 1 of Protocol No. 1 and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application in its part concerning the deprivation of the applicants' flat out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares inadmissible the remainder of the application.

Santiago Quesada
Registrar

Josep Casadevall
President