

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

THIRD SECTION

DECISION

Application no. 23566/05
by Levon GHASABYAN 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 28 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 Levon Ghasabyan, Ms Gohar Ghasabyan, Mr Arsen Ghasabyan and Ms Lilit Grigoryan, are Armenian nationals who were born in 1945, 1981, 1971 and 1972 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 applicant Levon Ghasabyan (hereafter, the first applicant) owned a flat which measured 57 sq. m. and was situated at 25 Byuzand Street, Yerevan. According to the applicants, the remaining three applicants – the first applicant's family members who resided in the same flat – enjoyed a right of use in respect of that flat. They further alleged that they also owned the underlying basements, and part of the common alley and stairway. According to the relevant ownership certificate, the basements in question were being used by the first applicant without permission.

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 1 December 2004 the first applicant's 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 23,640 United States dollars (USD).

6. By a letter of 14 January 2005 the Agency informed the first applicant that his flat was subject to expropriation and that it had been valued by an independent licensed organisation at USD 23,640, offering him this amount as compensation. An additional sum of USD 14,827.01 was offered to him as a financial incentive if he signed an agreement within five days.

7. By a letter of 18 January 2005 the first applicant expressed his consent to signing an agreement but disagreed with the amount of compensation offered.

8. On 20 January 2005 the Agency lodged a claim against the first applicant, seeking to oblige him to sign an agreement on the taking of his flat for State needs and to have him and his family members evicted.

9. On an unspecified date the first applicant lodged a counter-claim seeking, *inter alia*, to have his title to the underlying basements recognised and to be awarded compensation for them.

10. On 3 March 2005 the Kentron and Nork-Marash District Court of Yerevan granted the Agency's claim and dismissed that of the first

applicant, ordering him to sign an agreement for the total amount of USD 23,640 and that he and his family members be evicted.

11. On 15 March 2005 the first applicant lodged an appeal. The remaining three applicants allege that they unsuccessfully sought to be recognised as parties to the proceedings despite the fact that they enjoyed a right of use in respect of the flat in question and the fact that their eviction was ordered by the District Court.

12. On 12 April 2005 the Civil Court of Appeal granted the Agency's claim upon appeal and dismissed that of the first applicant.

13. On 27 April 2005 the applicants jointly lodged an appeal on points of law which they supplemented on 25 May 2005. In their appeal, they submitted, *inter alia*, that no compensation had been awarded to the three applicants enjoying a right of use in respect of the flat in question.

14. On 26 May 2005 the Court of Cassation examined the appeal only in its part concerning the first applicant and decided to dismiss it.

B. Relevant domestic law

15. 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

16. 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 that no compensation had been awarded to them for the remaining part of their property, namely the basement, the common alley and the stairway. The applicants lastly complained that no compensation had been awarded to the three applicants enjoying a right of use in respect of the flat in question.

17. The applicants complained under Articles 6 and 13 of the Convention that the national courts had not been independent. The applicants also invoked Article 14 in conjunction with these Articles.

18. The applicants Gohar Ghasabyan, Arsen Ghasabyan and Lilit Grigoryan complained under Article 6 of the Convention that they had been denied access to court. In particular, the court proceedings affected their rights since they were users of the flat in question. However, both the Civil Court of Appeal and the Court of Cassation deprived them of the possibility to take part in the proceedings despite their repeated requests.

THE LAW

A. Deprivation of the applicants' flat

19. 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."

20. 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.

21. 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 **117.7 sq. m** and situated at 4/6 Amiryan Street, apt 40, 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."

22. 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 could not be considered as a flat as such, since it did not have any internal decoration.

23. 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).

24. 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".

25. 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.

26. 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).

27. 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.

28. 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)).

29. 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*).

30. 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

31. The applicants also complained under Article 1 of Protocol No. 1 that no compensation was awarded to them for the underlying basement, the common alley and the stairway. They further raised a number of complaints under Articles 6, 8, 13 and 14 of the Convention.

32. Having regard to the facts of the case, the parties' observations, the Government's declaration and its decision to strike out the complaint under Article 1 of Protocol No. 1 concerning the deprivation of the applicants' flat, the Court considers that the main legal question raised in the present application has been resolved. It concludes, therefore, that there is no need to give a separate ruling on the applicants' remaining complaints under Article 1 of Protocol No. 1 and Articles 6, 8, 13 and 14 of the Convention (see, *mutatis mutandis*, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

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;

Holds that there is no need to examine separately the remaining complaints under Article 1 of Protocol No. 1 and Articles 6, 8, 13 and 14 of the Convention.

Santiago Quesada
Registrar

Josep Casadevall
President