

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

THIRD SECTION

DECISION

Application no. 3310/06
by Ashot POGHOSYAN 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 16 January 2006,

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 Ashot Poghosyan, Mr Tigran Poghosyan, Ms Marine Poghosyan and Ms Anahit Melkonyan, are Armenian nationals who were born in 1951, 1974, 1976 and 1953 respectively and live in Yerevan. They were represented before the Court by Mr V. 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 41.05 sq. m. and was situated at 15 Byuzand Street, Yerevan.

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.

5. By a letter of 25 January 2005 a private company acting on behalf of the State, Vizkon Ltd, informed the applicant Ashot Poghosyan (hereafter, the first applicant) that his house was situated within an expropriation zone and was to be taken for State needs for the purposes of implementation of town-planning projects under the Government Decree no. 1151-N. Vizkon Ltd also requested the first applicant to allow a valuation of his property.

6. On 8 February 2005 Vizkon Ltd instituted proceedings on behalf of the State against the first applicant, seeking to oblige him to allow a valuation of his house and sign an agreement on the taking of his property for State needs based on the results of such valuation, and to evict him and his family.

7. It appears that on 21 February 2005 the applicants' house was valued by a licensed valuation organisation at 13,900 United States dollars (USD).

8. On an unspecified date Vizkon Ltd supplemented its initial claim by instituting proceedings on behalf of the State against all the applicants, seeking to oblige them to sign an agreement on the taking of their property for State needs and to evict them.

9. On 23 March 2005 the Kentron and Nork-Marash District Court of Yerevan granted the claim, ordering the applicants to sign the agreement for the total amount of USD 13,900 and that they be evicted.

10. On 6 April 2005 the applicants lodged an appeal which they supplemented on 25 April 2005.

11. On 3 June 2005 the Civil Court of Appeal granted the claim of Vizkon Ltd upon appeal.

12. On 17 June 2005 the applicants lodged an appeal on points of law which they supplemented on an unspecified date. In their appeal, they argued, *inter alia*, that the deprivation of their property was in violation of Article 28 of the Constitution.

13. On 18 July 2005 the Court of Cassation dismissed the applicants' appeal.

B. Relevant domestic law

14. 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

15. The applicants complained that the deprivation of their flat was in violation of the guarantees of Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1.

THE LAW

16. The applicants complained about the deprivation of their flat and invoked Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1. 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."

17. 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.

18. 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 pay 45,000 Euros jointly to the applicants. The Government consider this declaration to be reasonable in the light of the Court's case law.
>
> The sum referred to above, that 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. The sum will be payable within three months from the date of notification of the decision

> taken by the Court pursuant to Article 37 § 1 of the [Convention]. In the event of failure to pay the sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points.
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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."

19. In a letter of 26 October 2010 the applicants expressed the view that, firstly, the sum mentioned in the Government's declaration was unacceptably low given the location of the expropriated flat. Secondly, since their flat was a separate one-storey building, they enjoyed an unrestricted right under the Civil Code to use the underlying plot of land measuring 60 sq. m. However, the sum offered by the Government did not in any way cover the loss of their right to use that land. The amount of this loss should have been calculated and added to the value of their flat. Thirdly, there was a disagreement between the parties regarding the facts of the case, more specifically, the scope of their possessions. According to the Government, their possessions only included the expropriated flat, while they argued that their possessions also included the right to use the above-mentioned underlying plot of land.

20. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. It reiterates 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).

21. The Court points out 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".

22. 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.

23. 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).

24. 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). It notes that the circumstances of the present case and the nature of the applicants' complaint are almost identical. The Court therefore considers that the nature and the amount of the proposed redress, that is the payment of EUR 45,000 jointly to the applicants, is consistent with the principles established and the amount awarded in the just satisfaction judgment in the case of *Minasyan and Semerjyan* ((just satisfaction), no. 27651/05, § 17-21, 7 June 2011), as far as the applicants' flat is concerned.

25. As regards the applicants' arguments concerning the underlying plot of land, the Court notes that the applicants raised this issue neither before the domestic courts nor in their application to the Court. Thus, the plot of land in question was never an object of the present dispute either at the domestic level or before the Court. The first time the applicants claimed any rights, including compensation, in respect of that plot of land was in their observations and just satisfaction claim submitted on 16 November 2007. The Court therefore considers that the alleged disagreement as to the facts falls clearly beyond the scope of the present application and does not affect the main issues examined in it. Furthermore, it lacks competence to examine this complaint for the failure to exhaust the domestic remedies and to comply with the six months' time-limit.

26. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed 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)).

27. 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*).

28. 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)).

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 out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Santiago Quesada
Registrar

Josep Casadevall
President