

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

THIRD SECTION

DECISION

Applications nos. 220/06 and 32289/06
Vigen VAHANYAN and Others
against Armenia

The European Court of Human Rights (Third Section), sitting on 6 November 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above applications lodged on 26 December 2005 and 4 August 2006,

Having regard to the fact that on 24 August 2010 it was decided to join the above two applications,

Having regard to the unilateral declaration submitted by the respondent Government on 20 December 2010 requesting the Court to strike the applications out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Vigen Vahanyan (the first applicant), Mr Zohrab Vahanyan (the second applicant), Ms Anahit Martirosyants (the

third applicant), Mr Gor Vahanyan (the fourth applicant), Ms Rema Vahanyan (the fifth applicant), Mr Armen Vahanyan (the sixth applicant) and Ms Rema Khachatryan (the seventh applicant) are Armenian nationals who were born in 1937, 1965, 1967, 1996, 1997, 1963 and 1937 respectively and live in Yerevan.

2. The applicants were represented before the Court by Mr V. Grigoryan and K. Badalyan, lawyers 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.

3. On 6 April 2011 the applicants informed the Court that the third applicant had passed away on 3 April 2011. The second applicant, who was the husband of the third applicant, expressed the wish to pursue the application on behalf of his late wife.

A. The circumstances of the case

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

5. The first applicant owned a house which measured 45.36 sq. m. and was situated at 15 Byuzand Street, Yerevan. He also owned a plot of land measuring 63 sq. m. and leased another 13 sq. m. of land. The second, third, fourth, fifth, sixth and seventh applicants are the first applicant's family members and they enjoyed a right of use in respect of his house.

6. On 1 August 2002 the Government adopted Decree no. 1151-N, approving the expropriation zones of the immovable property (plots of land, buildings and constructions) situated within the administrative boundaries of the Central District of Yerevan to be taken for the needs of the State for the purpose of carrying out construction projects, covering a total area of 345,000 sq. m. Byuzand Street was listed as one of the streets falling within such expropriation zones.

7. On 17 June 2004 the Government adopted Decree no. 909-N, contracting out the construction of one of the sections of Byuzand Street – which was to be renamed 'Main Avenue' – to a private company, Vizkon Ltd.

8. On 1 October 2004 Vizkon Ltd and the Yerevan Mayor's Office signed an agreement which, *inter alia*, authorised the former to negotiate directly with the owners of the property subject to expropriation and, should such negotiations fail, to institute court proceedings on behalf of the State, seeking forced expropriation of such property.

9. It appears that Vizkon Ltd unsuccessfully attempted to arrange an assessment of the first applicant's property in order to offer him compensation for the purpose of expropriation, since the first applicant created obstacles.

1. The first set of proceedings

10. On 8 February 2005 Vizkon Ltd lodged a claim on behalf of the State against the first applicant with the Kentron and Nork-Marash District Court of Yerevan, seeking to oblige him to allow a valuation of his house and sign an agreement on taking of his property for State needs based on the results of such valuation, and to evict him and his family.

11. It appears that at some point the first applicant's property was valued by a valuation organisation and was estimated at a total of 32,371.52 US dollars (USD).

12. On 4 April 2005 the District Court decided to grant the claim of Vizkon Ltd, ordering the first applicant to sign the agreement for the total amount of USD 32,371.52 and that he and his family be evicted.

13. On 19 April 2005 the first applicant lodged an appeal.

14. On 2 June 2005 the Civil Court of Appeal decided to grant the claim of Vizkon Ltd on the same grounds. It also ordered the first applicant to pay court fees in the amount of 10,000 Armenian drams (AMD).

15. On 6 June 2005 the first applicant lodged an appeal on points of law, which he supplemented on 15 July 2005. In his supplement, the first applicant argued, *inter alia*, that the judgment of the Court of Appeal affected the rights of his family members, namely the third, fourth and fifth applicants, who had not been engaged in the proceedings.

16. On 18 July 2005 the Court of Cassation upheld the judgment of the Court of Appeal.

17. On the same date the second, sixth and seventh applicants lodged an appeal on points of law against the judgment of the Court of Appeal. They argued that the judgment had affected their rights and obligations but that they had never been engaged as parties to the proceedings. Moreover, no copy of this judgment had been sent to them and they had found out about it only on 15 July 2005 from the first applicant's lawyer. They claimed that the judgment was unfounded and was in violation of the Constitution and other legal acts.

18. It appears that there were no further developments in these proceedings.

2. The second set of proceedings

19. On an unspecified date Vizkon Ltd made a compensation offer to the second, third, fourth and fifth applicants, seeking to terminate their right of use. This offer was not accepted by them.

20. On 13 July 2005 Vizkon Ltd instituted proceedings against them, seeking to terminate their right of use, by paying each of them compensation in the amount of USD 2,000, and to have them evicted.

21. On 21 July 2005 the Kentron and Nork-Marash District Court of Yerevan granted the claim.

22. On an unspecified date the second, third, fourth and fifth applicants lodged an appeal.

23. On 1 September 2005 the Civil Court of Appeal upheld the judgment of the District Court. It also ordered the applicants to pay court fees in the amount of AMD 10,000.

24. On 15 September 2005 the second, third, fourth and fifth applicants lodged an appeal on points of law.

25. On 4 November 2005 the Court of Cassation quashed the judgment of the Court of Appeal, finding that the latter had applied the wrong governmental decree in calculating the amount of compensation.

26. On 16 December 2005 the Court of Appeal examined the claim anew and decided to grant it, terminating the second, third, fourth and fifth applicants' right of use, awarding each of them AMD 2,000,000 and ordering their eviction. It also ordered the applicants to pay court fees in the amount of AMD 30,000.

27. On 29 December 2005 the second, third, fourth and fifth applicants lodged an appeal on points of law, in which they argued, *inter alia*, that the termination of their right of use had been effected in violation of the requirements of Article 225 of the Civil Code.

28. On 3 February 2006 the Court of Cassation dismissed the appeal in the absence of the parties.

29. On 23 February 2006 the applicants were evicted from the house in question, which was immediately demolished.

B. Relevant domestic law

30. 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

31. The first applicant raised the following complaints:

(a) Under Article 6 of the Convention he alleged that the courts reached arbitrary judgments, that his representative had not been allowed to make submissions and to lodge motions in the appeal proceedings, and that the Court of Appeal had unlawfully terminated the proceedings on his counter-claim.

(b) Under Article 8 of the Convention he alleged that the Court of Appeal had ordered his and his family's eviction despite the fact that he was still the legal owner of the house in question.

(c) Under Article 13 of the Convention he alleged that the Civil Court of Appeal had terminated the proceedings on his counter-claim and refused to put into motion the procedure for testing the constitutionality of Government Decree no. 1151-N.

(d) Under Article 1 of Protocol No. 1 he complained that his deprivation of property was unlawful and was not effected in the public interest.

32. The second, third, fourth and fifth applicants raised the following complaints in respect of the second set of proceedings:

(a) Under Articles 6 and 13 of the Convention they alleged that the courts were not impartial and independent because in all similar expropriation disputes they had always ruled in favour of the State.

(b) Under Article 8 of the Convention they alleged that their right to respect for home had been violated.

(c) Under Article 1 of Protocol No. 1 they alleged that the deprivation of their property was unlawful and was not effected in the public interest. Furthermore, the amount of compensation awarded was inadequate.

33. The sixth and seventh applicants raised the following complaints:

(a) Under Article 8 of the Convention they alleged that they had been evicted from their home without a judicial act adopted to that effect.

(b) Under Article 1 of Protocol No. 1 they alleged that no compensation had been awarded to them despite the fact that the sixth applicant enjoyed a right of use in respect of the house, while the seventh applicant was its co-owner.

34. The second, third, fourth, fifth, sixth and seventh applicants complained under Article 3 of the Convention that the entire expropriation process caused them feelings of suffering and anxiety.

35. On 29 November 2006 the second, third, fourth, fifth, sixth and seventh applicants lodged their completed application form in which they also raised the following complaints:

(a) Under Article 6 of the Convention the second, third, fourth and fifth applicants alleged that the proceedings in which they were involved had been of a formal character, had been conducted with procedural violations and that the domestic courts reached arbitrary findings.

(b) Under Article 6 of the Convention the second, sixth and seventh applicants complained that they were not made parties to the first set of proceedings, despite the fact that those proceedings affected their civil rights and obligations, and that their appeal on points of law lodged on 18 July 2005 was not examined.

(c) Under Article 13 of the Convention they alleged that they were deprived of access to court, since they were prohibited by Article 160 of the Code of Civil Procedure from contesting before the courts Government Decree no. 1151-N of 1 August 2002.

(d) Under Article 34 of the Convention the second, third, fourth and fifth applicants alleged an interference with their right of individual petition,

because of the criminal proceedings that were instituted in respect of their lawyer.

THE LAW

A. Deprivation of the applicants' flat

36. The applicants complained about the deprivation of their flat. They relied on Article 1 of Protocol No. 1 of the Convention 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."

37. Following unsuccessful friendly settlement negotiations the Government informed the Court, by letter dated 20 December 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.

38. 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.
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> In these circumstances, and having regard to the particular facts of the case, the Government, declare that they offer to pay the applicants the difference between **EUR 75,000** ... and the amount that has already been paid to the applicants [on the basis of] the judgments of the domestic courts that amounts to **USD 32,371.52** plus **AMD 8,000,000**. The Government consider this declaration to be reasonable in the light of the Court's case law.
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> The amount 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 payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this 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."

39. In a letter of 21 February 2011 the applicants objected to the Government's declaration. They submitted that, firstly, the Government did not make in their declaration any admission of a violation of their rights under Articles 6 and 8 of the Convention. Secondly, the amount of redress proposed by the Government was inadequate and insufficient. Thirdly, their case raised issues which had not been determined by the Court in the past.

40. 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).

41. 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."

42. 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.

43. 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).

44. 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 similar if not identical.

45. Turning to the nature of the proposed redress, the Court notes that the Government proposed to pay the applicants EUR 75,000 minus the amounts of USD 32,371.52 and AMD 8,000,000 that had already been paid to them. The Court considers that the nature and the amount of the redress proposed, even after the sums of USD 32,371.52 and AMD 8,000,000 have been deducted, are 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). For the purposes of facilitating the implementation of the Government's unilateral declaration and avoiding any ambiguity in the calculation of the resulting amount, the Court points out that the sum of USD 32,371.52, as converted into Armenian drams at the rate applicable at the date of the payment effected within the framework of the present unilateral declaration, and the sum of AMD 8,000,000 are to be deducted from the amount resulting from the conversion of EUR 75,000 into Armenian drams at the rate applicable at the date of the payment effected within the framework of the present unilateral declaration.

46. 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)).

47. Moreover, in the 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 this part of the applications (Article 37 § 1 *in fine*).

48. 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 applications 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)).

49. In view of the above, the Court considers it appropriate to strike the applications in their part concerning the deprivation of the applicants' flat out of the list.

B. Other alleged violations of the Convention

50. The second, third, fourth, fifth, sixth and seventh applicants also complained that they were denied access to court as guaranteed by Article 6 of the Convention because they had been unable to contest the lawfulness of the Government Decree no. 1151-N. The sixth and seventh applicants also complained that their eviction from the house and its demolition violated their rights under Article 8 of the Convention. Furthermore, all the applicants raised other complaints under Articles 6 and 8 as well as under Articles 3, 13 and 34 of the Convention.

51. Having regard to the facts of the case, the Government's unilateral declaration and its decision to strike out the complaints under Article 1 of Protocol No. 1 in respect of 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 Articles 3, 6, 8, 13 and 14 of the Convention (see, *mutatis mutandis*, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007; and *Ghasabyan and Others v. Armenia* (dec.), no. 23566/05, § 32, 15 November 2011).

For these reasons, the Court unanimously

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

Decides to strike the applications in their 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 Articles 3, 6, 8, 13 and 34 of the Convention.

Santiago Quesada
Registrar

Josep Casadevall
President