

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

THIRD SECTION

DECISION

Application no. 3309/06
by Avetik YERANOSYAN
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 17 January 2006,

Having regard to the declaration submitted by the respondent Government on 5 June 2009 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Avetik Yeranosyan, is an Armenian national who was born in 1943 and lives in Aragats, Armenia. He was represented before the Court by Mr G. Margaryan, 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 owned a house and a plot of land which measured 60.2 sq. m. and 70.2 sq. m. respectively and were 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 2 February 2005 a private company acting on behalf of the State, Vizkon Ltd, informed the applicant that his house and plot of land were situated within an expropriation zone and were to be taken for State needs. Vizkon Ltd further stated that this property had been valued by a licensed valuation organisation at a total of 33,750 United States dollars (USD) and offered the applicant an equivalent sum in the national currency as compensation.

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

7. On an unspecified date Vizkon Ltd lodged a claim with the Kentron and Nork-Marash District Court of Yerevan on behalf of the State, seeking to oblige the applicant to sign an agreement on the taking of his property for State needs and to evict him and his family.

8. On 11 March 2005 the District Court granted the claim of Vizkon Ltd, ordering the applicant to sign the agreement for the total amount of USD 33,750 and that he and his family be evicted.

9. On 22 March 2005 the applicant lodged an appeal.

10. On 2 June 2005 the Civil Court of Appeal granted the claim of Vizkon Ltd upon appeal.

11. On 17 June 2005 the applicant lodged an appeal on points of law which he supplemented on 15 July 2005. In his appeal, he argued, *inter alia*, that the deprivation of his property was in violation of Article 28 of the Constitution.

12. On 18 July 2005 the Court of Cassation dismissed the applicant's appeal.

B. Relevant domestic law

13. 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).

COMPLAINT

14. The applicant complained that the deprivation of his property was in violation of the guarantees of Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1.

THE LAW

15. The applicant complained about the deprivation of his flat and invoked Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1. The Court considers that the applicant's 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."

16. Following unsuccessful friendly settlement negotiations the Government informed the Court, by letter dated 5 June 2009, 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.

17. The declaration provided as follows:

> "...the Government hereby wish to express – by way of the unilateral declaration – its acknowledgement of the deprivation of the [applicant's] 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, instead of the amount of 10,327,606 AMD, transferred to the [applicant's] bank account on the basis of the court judgment, to the applicant the amount of **USD 120,000** or as an alternative give an apartment, two apartments or three apartments [measuring] **150 sq. m.** in total instead of his previous apartment and plot of land that measued 60.2 sq. m. and 70 sq. m. respectively and in addition to pay the amount of **100,000 AMD** per month for rent of another apartment until the time when the above mentioned apartment or apartments will be allocated to him. The Government consider this declaration to be reasonable in the light of the Court's case law.
>
> The sum or the apartment or apartments referred to above, that are 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.

...

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."

18. In a letter of 28 July 2009 the applicant objected against the Government's declaration, claiming that Article 37 § 1 (c) was not applicable to the particular circumstances of his case. He further submitted that the compensation offered was inadequate, while the offer of a flat lacked necessary details.

19. 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).

20. 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".

21. 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.

22. 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).

23. 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 applicant's complaint are almost identical.

24. Turning to the nature of the proposed redress, the Court notes that the Government have proposed two alternatives: payment of a sum of money or provision of a flat/flats, both of which are proposed instead of the amount already paid to the applicant. Having regard to the second alternative, the Court is not convinced that this is an acceptable proposal, since the undertaking to provide a flat was made conditional on the return of the sum of money already paid to the applicant. Thus, this undertaking could not be considered truly unilateral as its implementation was predicated on the other party's fulfillment of certain additional requirements (see *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et seq., 23 March 2006). Furthermore, the Government failed to provide sufficient details of the flat in question. The Court therefore rejects this alternative.

25. The Court, however, is of a different opinion as far as the first alternative is concerned, namely the payment of USD 120,000 minus AMD 10,327,606. The Court considers that the nature and the amount of the redress proposed in this alternative, even after the sum of AMD 10,327,606 has been deducted, 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). For the purposes of facilitating the implementation of the Government's declaration and avoiding any ambiguity in the calculation of the resulting amount, the Court points out that the sum of AMD 10,327,606 is to be deducted from the amount resulting from the conversion of USD 120,000 into Armenian drams at the rate applicable at the date of settlement.

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, the terms of the redress proposed in the first alternative contained in that declaration 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