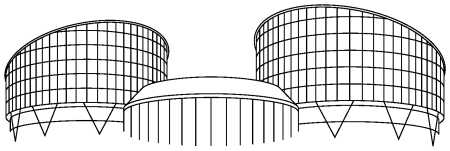

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF AMIRKHANYAN v. ARMENIA

(Application no. 22343/08)

JUDGMENT

STRASBOURG

3 December 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Amirkhanyan v. Armenia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mirjana Lazarova Trajkovska, *President,*
Ledi Bianku,
Linos-Alexandre Sicilianos,
Paul Mahoney,
Aleš Pejchal,
Robert Spano,
Armen Harutyunyan, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 10 November 2015,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22343/08) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Kondranov Amirkhanyan ("the applicant"), on 12 May 2008.

2. The applicant was represented 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.

3. The applicant alleged, in particular, that the decision of the Court of Cassation of 12 December 2007 to quash the judgment of the Civil Court of Appeal of 9 March 2007 had infringed the principle of *res judicata* and his right to the peaceful enjoyment of possessions.

4. On 14 June 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in Yerevan.

6. A third person, G., owned a plot of land, a part of which, with her consent, was separated by a fence and used by another person, J.

7. On 21 April 1998 G. concluded an agreement with J., according to which she gave a part of her plot of land, measuring 285 sq. m., to him. It appears that the plot of land actually used by J., as separated by the fence, was 38.75 sq. m. bigger than the 285 sq. m. plot given by G. The 38.75 sq. m. also belonged to G. In this connection, another agreement was reached between G. and J., according to which G. gave her consent for J. to become the owner of the whole plot of land used by him. However, it appears that J.'s ownership rights were officially registered only in respect of the plot of land measuring 285 sq. m.

8. On 28 April 1998 the applicant bought the larger plot of land from J. and, since the fence was still in place, continued to use also the 38.75 sq. m. strip of land.

9. In 2004 G. instituted proceedings against the applicant, seeking to take the 38.75 sq. m. strip of land used by the applicant, claiming her ownership rights.

10. On 14 December 2006 the Erebuni and Nubarashen District Court of Yerevan granted the claim, ordering the applicant to release the strip of land to G.

11. On an unspecified date the applicant lodged an appeal.

12. On 9 March 2007 the Civil Court of Appeal granted the appeal and dismissed G.'s claim. In particular, the Court of Appeal found that since G. had agreed that J. become the owner of the plot of land used by him, as separated by the fence, she had relinquished her rights in respect of the strip of land in favour of J. and, consequently, in favour of the applicant.

13. This judgment was subject to appeal on points of law within six months from the date of its delivery.

14. On 26 March 2007 G. lodged an appeal on points of law against the judgment of 9 March 2007 with the Court of Cassation, claiming that it had been adopted in violation of substantive and procedural law. As a ground for admitting her appeal on points of law, G. submitted, pursuant to Article 231.2 § 1 (3) of the Code of Civil Procedure (the CCP), that the violations of the substantive and procedural law might have grave consequences, such as deprivation of her ownership rights in respect of the plot of land.

15. On 7 April 2007 amendments were introduced to the CCP which stipulated that there was no right to bring an appeal on points of law more than once, unless the Court of Cassation – when returning an appeal – fixed a time-limit to correct and re-submit it (see paragraph 26 below).

16. On 12 April 2007 the Court of Cassation decided to return G.'s appeal as inadmissible for lack of merit. The reasons provided were as follows:

> "The Civil Chamber of the Court of Cassation ... having examined the question of admitting [G.'s appeal lodged against the judgment of the Civil Court of Appeal of 9 March 2007], found that it must be returned for the following reasons:

> Pursuant to Article 230 § 1 (4.1) of [the CCP] an appeal on points of law must contain any of the grounds [required by] Article 231.2 § 1 of [the CCP].
>
> The Court of Cassation finds that the admissibility grounds raised in the appeal on points of law[, as required by] Article 231.2 § 1 of [the CCP], are absent. In particular, the Court of Cassation considers the arguments raised in the appeal on points of law concerning a possible judicial error and its consequences, in the circumstances of the case, to be unfounded.
>
> ...
>
> At the same time, the Court of Cassation does not find it appropriate to fix a time-limit for correcting the shortcomings and lodging the appeal anew."

17. This decision entered into force from the moment of its delivery and was not subject to appeal.

18. On 7 September 2007 G. lodged another appeal on points of law with the Court of Cassation against the judgment of the Court of Appeal of 9 March 2007, alleging violations of substantive and procedural law. As a ground for admitting her appeal G. indicated, in addition to the ground mentioned in her appeal of 26 March 2007, that the judicial act to be adopted by the Court of Cassation on her case might have a significant impact on the uniform application of the law, and that the contested judgment of the Court of Appeal contradicted a judicial act previously adopted by the Court of Cassation.

19. On 1 October 2007 the Court of Cassation decided to admit the appeal for examination. The reasons provided were as follows:

> "[The appeal] must be admitted for examination since it satisfies the requirements of Articles 230 and 231.2 § 1 of [the CCP]."

20. On 8 October 2007 the applicant lodged a reply to G.'s appeal with the Court of Cassation where, *inter alia*, he stated that the admission of G.'s second appeal by the Court of Cassation was in violation of the principle of *res judicata* and his property rights. When the Court of Cassation, by its decision of 12 April 2007, had returned G.'s appeal without fixing a time-limit to correct any shortcomings and to re-submit the appeal, the judgment of the Court of Appeal of 9 March 2007 became final and binding.

21. On 12 December 2007 the Court of Cassation examined G.'s appeal on the merits and decided to grant it partially by quashing the judgment of the Court of Appeal of 9 March 2007 in its part related to G.'s property claim in respect of the plot of land and remitting the case for a fresh examination. The Court of Cassation found that the Civil Court of Appeal, when reaching its conclusions, had failed to take into account an expert opinion which was among the materials of the case file, as well as to indicate the provisions of the domestic law on which its judgment had been based.

22. On 1 April 2008 the General Jurisdiction Court of Erebuni and Nubarashen Districts of Yerevan conducted a fresh examination of G.'s claim and granted it by recognising G.'s ownership rights in respect of the strip of land in question.

23. On an unspecified date the applicant lodged an appeal.

24. On 10 July 2008 the Civil Court of Appeal dismissed the applicant's appeal and upheld the judgment of the District Court.

II. RELEVANT DOMESTIC LAW

A. The Code of Civil Procedure

25. The relevant provisions of the CCP, as in force prior to the amendments of 7 April 2007, read as follows:

Article 1: Civil procedure legislation

"3. Proceedings in civil cases are conducted in accordance with laws in force during the examination of the case."

Article 219: Entry into force of judgments of the Court of Appeal

"Judgments of the Court of Appeal enter into force from the moment of their delivery."

Article 222: Review of judicial acts through cassation proceedings

"1. Judgments of ... the Court of Appeal which have entered into force ... can be reviewed through cassation proceedings ... ."

Article 224: The court that examines appeals on points of law and the objective of its activity

"1. Appeals on points of law lodged against judgments of ... the Court of Appeal which have entered into force ... are examined by the Civil Chamber of the Court of Cassation (hereafter, Court of Cassation).

2. The objective of the Court of Cassation's activity is to ensure the uniform application of the law and its correct interpretation of the law and to facilitate the development of the law."

Article 225: Grounds for lodging an appeal on points of law

"An appeal on points of law can be lodged on the ground of ... a substantive or a procedural violation of the parties' rights ..."

Article 228.1: Time-limits for lodging an appeal on points of law

"1. An appeal on points of law can be lodged within six months from the date of entry into force of the judgment of the lower court deciding on the merits of the case."

Article 230: The content of an appeal on points of law

"1. An appeal on points of law must contain ... (4) the appellant's claim, with reference to the laws and other legal acts and specifying which provisions of substantive or procedural law have been violated or wrongly applied ...; (4.1) arguments required by any of the subparagraphs of the first paragraph of Article 231.2 of this Code ... ."

Article 231.1: Returning an appeal on points of law

"1. An appeal on points of law shall be returned if it does not comply with the requirements of Article 230 and the first paragraph of Article 231.2 of this Code ...

2. The Court of Cassation shall adopt a decision to return an appeal on points of law within ten days after the receipt of the appeal.

3. In its decision to return an appeal on points of law the Court of Cassation may fix a time-limit for correcting the shortcoming and lodging the appeal anew."

Article 231.2: Admitting an appeal on points of law

"1. The Court of Cassation shall admit an appeal on points of law, if (1) the judicial act to be adopted on the given case by the Court of Cassation may have a significant impact on the uniform application of the law, or (2) the contested judicial act contradicts a judicial act previously adopted by the Court of Cassation, or (3) a violation of the procedural or the substantive law by the lower court may cause grave consequences, or (4) there are newly discovered circumstances."

Article 236: The powers of the Court of Cassation

"1. Having examined a case, the Court of Cassation has the right: (1) to uphold the court judgment and to dismiss the appeal...; (2) to quash the whole or part of the judgment and to remit the case for a new examination..."

Article 239: Entry into force of a decision of the Court of Cassation

"A decision of the Court of Cassation enters into force from the moment of its delivery and is not subject to appeal."

26. The provisions of the CCP, which were modified by the amendments of 7 April 2007 (in italics), read as follows:

Article 228.1: Time-limits for lodging an appeal on points of law

"1. An appeal on points of law can be lodged within six months from the date of entry into force of the judgment of the lower court deciding on the merits of the case. *The same person may lodge an appeal on points of law only once, except cases envisaged by the third paragraph of Article 231.1.*"

Article 231.1: Returning an appeal on points of law

"1. An appeal on points of law shall be returned if it does not comply with the requirements of Article 230 and paragraph 1 of Article 231.2 of this Code ... *or there are grounds envisaged by the fourth paragraph of this Article.*

2. The Court of Cassation shall adopt a decision to return an appeal on points of law within ten days after the receipt of the appeal.

3. In its decision to return an appeal on points of law the Court of Cassation may fix a time-limit for correcting the shortcoming and lodging the appeal anew.

4. If a decision is taken to return the appeal without fixing a time-limit, the appellant may not bring another appeal."

The amendments in question did not contain transitional provisions.

B. The Constitution

27. Article 42 provides, *inter alia*, that laws and other legal acts worsening a person's legal situation shall not have a retroactive force.

C. The Law on Legal Acts

28. Article 78 provides that legal acts restricting the rights and freedoms of legal entities or physical persons, as well as worsening their legal situation in some other way, may not have a retroactive force.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicant complained that the decision to quash the judgment of 9 March 2007 had been taken in violation of the principle of *res judicata*. He relied on Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

A. Admissibility

30. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

31. The Government submitted that there had been no violation of the principle of finality of judgments. They alleged that, by virtue of

Article 228.1 of the CCP prior to its amendments of 7 April 2007, an unlimited number of appeals could be lodged with the Court of Cassation within the prescribed six months as long as they were based on different grounds. The parties obtained a right to lodge an appeal on points of law on 9 March 2007, when the Court of Appeal adopted its judgment and prior to the above-mentioned amendments. Therefore, the Court of Cassation had to apply the law which was in force at that time. Moreover, the amendments of 7 April 2007 could not be applied to the present case, since Article 42 of the Constitution and Article 78 of the Law on Legal Acts prohibited the retroactive application of laws worsening a person's legal situation. There was a difference in grounds and scope between the first and second appeals submitted to the Court of Cassation since G. relied on different domestic legal provisions.

32. The applicant submitted that, by admitting G.'s second appeal on points of law and then quashing the final and binding judgment of the Court of Appeal of 9 March 2007, the Court of Cassation had violated the principle of *res judicata*. With effect from 7 April 2007, Articles 228.1 § 1 and 231.1 § 4 of the CCP explicitly prohibited appeals on points of law to be lodged more than once in the same case if no time-limit was fixed by the Court of Cassation to correct possible shortcomings. The Court of Cassation returned G.'s first appeal on points of law on 12 April 2007, when these amendments were already in force, and stated explicitly in its decision that it did not find it appropriate to fix a time-limit for correcting the shortcomings and lodging the appeal anew. From that moment the judgment of the Court of Appeal of 9 March 2007 became final and binding and G. had no right to lodge another appeal on points of law nor the Court of Cassation to admit such an appeal, regardless of its content. In any event, the two appeals lodged by G. were basically the same. The fact that she relied on other domestic provisions in her new appeal did not mean that the very essence of her arguments was different. Both appeals made reference to the same expert opinion. Lastly, as regards the alleged prohibition of retroactive application of the law, Article 1 § 3 of the CCP stipulated a general rule of civil procedure, pursuant to which civil cases were to be examined in accordance with laws in force at the material time.

2. The Court's assessment

33. The Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII). Legal

certainty presupposes respect for the principle of *res judicata*, that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX).

34. Turning to the circumstances of the present case, the Court notes that on 9 March 2007 the Civil Court of Appeal ruled in favour of the applicant in a property dispute. Appeal lay against this judgment to the Court of Cassation, which is the final instance, within six months by virtue of Article 228.1 § 1 of the CCP. On 26 March 2007 the applicant's opponent lodged an appeal on points of law. In the meantime, on 7 April 2007 amendments were introduced in the CCP which explicitly prohibited lodging appeals on points of law more than once unless, when returning an appeal, the Court of Cassation fixed a time-limit for its correction and re-submission. On 12 April 2007 the Court of Cassation decided to return the appeal of 26 March 2007, specifying in its decision that it did not find it appropriate to fix such a time-limit. In spite of this, the applicant's opponent lodged another appeal on points of law on 7 September 2007, which the Court of Cassation decided to admit for examination on 1 October 2007, subsequently quashing the judgment of 9 March 2007.

35. The Government alleged that, even if at the time when the first appeal was returned the law prohibited lodging appeals on points of law more than once, in deciding to admit the second appeal the Court of Cassation was guided by the law prior to the amendments of 7 April 2007. They alleged that, before those amendments were introduced, an unlimited number of appeals on points of law could be lodged with the Court of Cassation within the prescribed six months. The Court of Cassation was guided by those rules since they were in force at the time when the Court of Appeal adopted its judgment, whereas the amendments of 7 April 2007 worsened the applicant's opponent's situation and were therefore not applied as was required by law. The Court, however, is not convinced by these allegations for the following reasons.

36. The Court notes firstly that, prior to 7 April 2007, there was no explicit provision in the Armenian civil procedure law allowing a party to civil proceedings to lodge an appeal on points of law twice, let alone an unlimited number of times. None of the provisions of the CCP stipulated such a right. To the contrary, Article 239 of the CCP provided that the decisions of the Court of Cassation were final and not subject to appeal.

Furthermore, the Government have not demonstrated that such a right derived from any well-established practice either. The procedure of returning appeals for their failure to comply with admissibility requirements was introduced in November 2005 (see *Borisenko and Yerevanyan Bazalt Ltd v. Armenia* (dec.), no. 18297/08, 14 April 2009), but there is no material before the Court to indicate that the new rules were authoritatively interpreted by the Court of Cassation in such a way as to allow parties to lodge appeals repeatedly until the expiry of the time-limit for appeal. The Government have also failed to submit any examples of domestic decisions dating from that period to show that what happened in the present case was part of normal practice rather than the result of some sort of omission.

37. Secondly, the Court notes that on 7 April 2007 there were amendments introduced in the civil procedure law which explicitly prohibited the lodging of more than one appeal on points of law, which suggests that there was lack of clarity in the rules prior to those amendments regarding the right of bringing an appeal on points of law.

38. It is true that at the material time there was one exception to the general rule stipulated by Article 231.1 § 3 of the CCP, allowing a party to the proceedings to re-lodge an appeal if the Court of Cassation considered that it contained shortcomings which could be corrected, in which case it fixed a time-limit for doing so and re-submitting the appeal. However, this exception did not apply to the present case, since the Court of Cassation explicitly stated in its decision of 12 April 2007 that it did not consider it appropriate to fix such a time-limit (see paragraph 16 above).

39. In the light of the above, the Court concludes that the judgment of the Civil Court of Appeal of 9 March 2007 could no longer be appealed against and became final and binding after the Court of Cassation decided on 12 April 2007 to return the appeal on points of law lodged by the applicant's opponent on 26 March 2007. Thus, by admitting another appeal lodged by the same party and subsequently granting it the Court of Cassation overturned a final judgment. The Court accepts that in certain circumstances legal certainty can be disturbed in order to correct a "fundamental defect" or a "miscarriage of justice" (see, among other authorities, *Ryabykh*, cited above, § 52; *Roşca v. Moldova*, no. 6267/02, § 52, 22 March 2005; and *Sutyazhnik v. Russia*, no. 8269/02, § 35, 23 July 2009). However, the Government did not suggest that this had happened in the present case. Nor does it follow from the materials of the case that this was the aim pursued. To the contrary, it appears that the Court of Cassation simply rendered a fresh decision in the case, moreover without having any legal basis for doing so. Thereby it breached the principle of *res judicata* enshrined in Article 6 § 1 of the Convention.

40. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

41. The applicant complained that the decision to quash the judgment of 9 March 2007 had infringed his right to the peaceful enjoyment of his possessions as provided in Article 1 of Protocol No. 1 to the Convention, which reads 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.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

42. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The Government, relying on their submissions under Article 6 § 1 of the Convention, argued that there had been no violation of Article 1 of Protocol No. 1. They further claimed as to the merits of the applicant's property dispute that he had no "possessions" within the meaning of Article 1 of Protocol No. 1.

44. The applicant submitted that the violation of Article 1 of Protocol No. 1 was not connected to the merits of his property dispute but to the fact that a final judgment, which had determined that the plot of land belonged to him, had been unlawfully quashed. As a result, he was deprived of his property.

2. The Court's assessment

45. The Court reiterates that "possessions" can be "existing possessions" or assets, including, in certain well-defined situations, claims. A final court judgment which recognises one's title to property may be regarded as a "possession" for the purposes of Article 1 of Protocol No. 1 (see *Brumărescu*, cited above, § 70, and *Vrioni and Others v. Albania*, no. 2141/03, § 71, 24 March 2009). Furthermore, quashing such a judgment

after it has become final and no longer subject to appeal will constitute an interference with the judgment beneficiary's right to the peaceful enjoyment of that possession (see *Brumărescu*, cited above, § 74, and *Ryabykh*, cited above, § 61).

46. In the present case, the Court notes that when dismissing the applicant's opponent's claim, the Civil Court of Appeal found that she had relinquished her ownership rights to the strip of land in favour of the applicant, thereby confirming the applicant's ownership in respect of that strip of land. That judgment became final on 12 April 2007 and can be considered as a "possession" within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Brumărescu*, cited above, § 70). Its subsequent quashing by the Court of Cassation therefore amounted to an interference with the peaceful enjoyment of the applicant's possessions as guaranteed by Article 1 of Protocol No. 1.

47. In this regard, the Court points out that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that the States have the right to control the use of property by enforcing "laws" (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). As already indicated above, there was no right under the Armenian civil procedure law to lodge a second appeal on points of law against the same judgment of the lower court. Therefore, by granting the second appeal on points of law and quashing the final judgment of the Civil Court of Appeal of 9 March 2007, the Court of Cassation did not act pursuant to "conditions provided for by law". It follows that the interference with the applicant's possessions was not lawful for the purpose of Article 1 of Protocol No. 1.

48. There has accordingly been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

50. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government contested this claim, arguing that there was no causal link between the alleged violations and the compensation sought.

52. The Court considers that the applicant has suffered non-pecuniary damage as a result of the violations found and awards him EUR 3,000 in respect of such damage.

B. Costs and expenses

53. The applicant did not claim any costs and expenses.

C. Default interest

54. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 December 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President