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

FOURTH SECTION

DECISION

Application no. 60456/12
Davit MANUKYAN
against Armenia

The European Court of Human Rights (Fourth Section), sitting on 19 October 2021 as a Committee composed of:

Jolien Schukking, *President,*
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 September 2012,

Having regard to the decision to give notice to the Armenian Government ("the Government") of the application,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Davit Manukyan, is an Armenian national who was born in 1966 and lives in Yerevan. He was represented by Mr A. Ghazaryan and Ms M. Baghdasaryan, lawyers practising in Yerevan.

2. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

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

4. On 13 August 1993 the applicant concluded a sale-purchase agreement with E.H. whereby he bought a house with a plot of land in Yerevan. The plot of land in question was fenced with a wall. According to the applicant, he had also been in possession of the plot of land situated outside the fence.

5. On 19 August 1993 the State Real Estate Registry ("the SRER") issued an ownership certificate which stated that the plot of land measured 1000 sq. m.

6. On 22 May 1998 the SRER issued a new ownership certificate in which the measurements of the plot of land were indicated as being "0.1 ha" (equal to 1000 sq. m.). Together with the ownership certificate, a handwritten plan was provided to the applicant which indicated that the size of the applicant's plot of land constituted 857 sq. m.

7. It appears that at some point the applicant's neighbours, A. and A.H. (hereinafter "the neighbours"), built a garage without a building permit on the piece of land next to the applicant's fence. In the applicant's submission, that piece of land was included in his plot of land.

8. By the decision of the Mayor of Yerevan ("the Mayor") of 1 June 2007, the neighbours' garage was recognised as state property. According to the decision, the garage, an unauthorised construction, had been built on state-owned land.

9. On 7 September 2007 an inspector from the SRER took measurements of the garage and the attached plot of land and concluded that the garage was subject to state registration. The relevant record on the measurements also noted that there was a dispute between the neighbours concerning the plot of land on which the garage was situated ("the disputed plot of land").

10. By the decision of 3 October 2007 the Mayor recognised the garage in question as a lawful construction and decided to allocate it to the neighbours by means of direct sale together with the attached plot of land.

11. Between 28 March and 3 April 2008 a construction expert carried out a construction and technical examination upon the applicant's request. According to the ensuing expert report, the size of the applicant's plot of land had been indicated as 847.6 sq. m. instead of 1000 sq. m. in the plan included in the ownership certificate of 22 May 1998 (see paragraph 6 above). Furthermore, that plan did not correspond to the one drawn up in the ownership certificate of 19 August 1993, according to which the applicant's plot of land included the plot of land allocated to the neighbours by the Mayor's decision of 3 October 2007.

12. On 28 July 2010 the applicant instituted administrative proceedings against the Yerevan Mayor's Office and, as third parties, the Ministry of Finance, the SRER and the neighbours contesting, *inter alia,* the Mayor's decisions of 1 June and 3 October 2007 (see paragraphs 8 and 10 above).

13. In the course of the proceedings before the Administrative Court, E.H. was questioned as a witness. He stated that he had sold to the applicant his plot of land which was fenced with a wall and that the sale-purchase agreement concluded between them on 13 August 1993 did not indicate the actual size of the plot of land.

14. In their objections before the Administrative Court, the neighbours submitted that the disputed plot of land had served as a pathway to their garage for approximately twenty-six years.

15. On 19 August 2011 the Administrative Court partially granted the applicant's claim. It found that the sale of the plot of land authorised by the Mayor's decision of 3 October 2007 had breached the applicant's ownership rights. As to the Mayor's decision of 1 June 2007, the Administrative Court considered that it had not affected the applicant's rights since it had only acknowledged state ownership over the unauthorised construction. It therefore rejected the applicant's claim in that respect.

16. At the applicant's request, on 17 October 2011 the Administrative Court delivered a supplementary judgment declaring invalid also the direct sale agreement concluded between the neighbours and the Yerevan Mayor's Office on 3 October 2007 and the resulting state registration of the disputed plot of land.

17. The Mayor, the Ministry of Finance and the neighbours lodged appeals against the judgments of 19 August and 17 October 2011.

18. On 10 January 2012 the Administrative Court of Appeal quashed both judgments and dismissed the applicant's claim in full. In doing so, the Administrative Court of Appeal, on the basis of the evidence before it, found that, notwithstanding the measurements indicated in the plans attached to the applicant's and the previous owner's ownership certificates, E.H. had ownership in respect of the 842 sq. m. which were fenced with a wall. The Court of Appeal accordingly found that in 1993 the applicant had acquired ownership in respect of a plot of land measuring 842 sq. m. As regards the plan included in the ownership certificate issued on 22 May 1998, the inconsistency had been corrected in that plan, and now indicated the actual measurements of the plot of land inside the fence, whereas the ownership certificate itself had mistakenly indicated the size mentioned in the 1993 certificate.

19. The applicant lodged an appeal on points of law.

20. On 21 March 2012 the Court of Cassation declared the appeal inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK

1. The Civil Code

21. According to Article 135 § 1, the right of ownership and other property rights in respect of immovable property, any limitations on these rights, and their creation, transfer and termination are subject to state registration.

22. According to Article 178 § 1, property is considered ownerless if it does not have an owner or if its owner is unknown or if its owner has renounced the right of ownership in respect of it.

23. According to Article 178 § 3, the right of ownership in respect of ownerless immovable property might be acquired by virtue of adverse possession (Article 187).

24. According to Article 187 § 1, the citizen or the legal entity who is not the owner of the real estate but has possessed it as his own property continuously, openly and in good faith for ten years, acquires a right of ownership in respect of that property (adverse possession).

25. According to Article 188 § 1, an unauthorised structure is an habitable building, construction, other structure or other immovable property built on a plot of land not allocated for that purpose in accordance with a procedure prescribed by law and other legal acts or built without the requisite permission or built with serious breaches of town planning norms and rules.

26. According to Article 188 § 3, the owner of the plot of land has the right to demolish an unauthorised construction located on his or her land. Upon the claim of the state, community or other interested persons, whose rights and interests protected by law have been violated, the unauthorised construction, which is not legalised, shall be subject to demolition and the plot of land shall be restored to its former state at the expense of the owner. A person who has built an unauthorised construction on the plot of land belonging to another person must compensate for the damage caused to the owner, including expenses for demolition of an unauthorised construction and restoration of the plot of land to its former state.

2. The Land Code (in force from 15 March 1991 to 15 June 2001)

27. Article 18 provided that ownership rights and the right of use over land shall be asserted by the relevant state act, issued by the executive committee of the respective local council of deputies.

3. Law on State Registration of Rights to Property (in force since 1999)

28. According to Section 42 § 1, errors made during state registration shall be corrected upon the submission of an application by the owner of the real property (user) or at the discretion of the Real Estate State Registration officer in the presence of the required documents.

29. According to Section 47 § 1, damages caused as a result of providing inaccurate and unreliable information on the registered rights and limitations in respect of the property shall be compensated for. If the parties do not come to an agreement, the amount of compensation shall be determined by the court.

30. According to Section 47 § 3, in case of mistakes made in the description of the boundaries and cadastral surveys (plans), the damages incurred are compensated by the persons who have carried out the respective task.

COMPLAINT

31. The applicant complained that his rights guaranteed under Article 1 of Protocol No. 1 to the Convention had been breached. In particular, the size of his plot of land had been reduced as a result of an alleged erroneous registration by the authorities whereas he had not been compensated for the loss.

THE LAW

32. The applicant complained that he had lost part of his plot of land without compensation in breach of the requirements of 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".

33. The Government submitted that the application was inadmissible on various grounds.

Firstly, they argued that the application was incompatible *ratione materiae* with the provisions of Article 1 of Protocol No. 1 since the applicant had never *de facto* possessed the disputed plot of land considering that it had served as a pathway leading to the neighbours' garage for approximately twenty-six years.

Secondly, the Government argued that the application was incompatible *ratione temporis* considering that Protocol No. 1 to the Convention had entered into force in respect of Armenia on 26 April 2002 whereas the alleged interference had taken place on 22 May 1998, the date when the SRER had issued a new ownership certificate (see paragraph 29 above).

Thirdly, the applicant failed to exhaust domestic remedies since he had failed to contest the Mayor's decision of 1 June 2007 before the Administrative Court of Appeal. In addition, the applicant could have applied for a correction of the error or compensation therefore pursuant to the Law on State Registration of Rights to Property (see paragraphs 29 and 30 above). He could have taken an action to demolish the unauthorised construction allegedly located in his property pursuant to Article 188 (3) of the Civil Code (see paragraph 26 above).

34. The applicant submitted that he had been provided with a valid ownership certificate which stated that the size of his plot of land was 0,1 ha (1000 sq. m.). He argued that the interference with his property rights had

taken place on 3 October 2007, the date when the Mayor had legalised the unauthorised construction and allocated it to the neighbours together with the attached plot of land (see paragraph 10 above). The plan attached to the ownership certificate issued in 1998 was drafted in a rather informal way.

The applicant further submitted that the Mayor's decision of 1 June 2007 did not specifically concern his rights and obligations. He then argued that an application seeking the correction or compensation for the mistake made by the SRER did not constitute an effective remedy for his complaints. The applicant did not comment on the possibility to take legal action pursuant to Article 188 (3) of the Civil Code.

35. The Court finds it unnecessary to examine all the inadmissibility grounds raised by the Government because the application is in any event inadmissible for the following reasons.

36. The Court reiterates that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 61, ECHR 2007-III, and *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). A person who complains of a violation of his or her right to property must first of all show that such a right existed (see *Pištorová v. the Czech Republic*, no. 73578/01, § 38, 26 October 2004; *Des Fours Walderode v. the Czech Republic* (dec.), no. 40057/98, ECHR 2004-V; and *Zhigalev v. Russia*, no. 54891/00, § 131, 6 July 2006).

37. In the present case it is not disputed that the applicant had "possessions" within the meaning of Article 1 of Protocol No. 1 in respect of the part of land acquired in 1993 which was fenced by a wall. However, it remains to be determined whether he also had "possessions" in respect of the disputed land outside the fence on which his neighbours had built a garage (see paragraphs 7-9 above).

38. The Court notes at the outset that the size of the applicant's plot of land was indicated differently in the ownership certificate of 22 May 1998 and in the plan attached to it. At the same time, in its decision of 10 January 2012 the Administrative Court of Appeal indicated yet another size. In particular, the ownership certificate issued on 22 May 1998 indicated that the applicant's plot of land measured 0.1 ha (1000 sq. m.), the plan attached to it indicated 857 sq. m. while the Administrative Court of Appeal found it established that the land fenced with a wall measured 842 sq. m. (see paragraphs 6 and 18 above). In this connection, the Court reiterates that it is not its task to substitute its own assessment of the facts for that of the domestic courts, and that it requires cogent elements to lead it to depart

from the findings of fact made by those courts (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 150, 20 March 2018). In the circumstances of the present case, the Court has no reason to question the facts as established and interpreted by the Administrative Court of Appeal.

39. It is not disputed by the applicant that he was aware that there was an inconsistency between the ownership certificate dated 22 May 1998 and the plan attached to it with regard to the size of the plot of land (see paragraph 34 above). Thus there was already some doubt as to the size of his property before Protocol No. 1 to the Convention entered into force in respect of Armenia on 26 April 2002. The Court notes, however, that the applicant did not undertake any action to clarify the matter and never took the initiative to correct the inconsistency.

40. The Court further notes that it was established by the Administrative Court of Appeal that in 1993 the applicant had acquired ownership in respect of the plot of land measuring 842 sq. m. which was fenced with a wall. Against that background, the Administrative Court of Appeal found that in the plan attached to the ownership certificate of 22 May 1998 the inconsistency had been corrected. It now indicated the correct measurements of the plot of land inside the fence. However, the ownership certificate itself had mistakenly indicated the size mentioned in the 1993 certificate (see paragraph 18 above). In short, the Administrative Court of Appeal found that the applicant had never acquired the disputed plot of land outside his fence.

41. In addition, the Court notes that there is nothing in the material before it to suggest that the applicant has ever been in physical possession of the disputed plot of land. Nor does it appear that he has ever occupied or otherwise used the plot of land in question. In particular, the applicant's house and the attached plot of land were fenced with a wall (see paragraphs 4 and 13 above) whereas the disputed plot of land which was situated outside the fence, as stated by the Government and not specifically contested by the applicant, had served as a pathway leading to the neighbours' garage for approximately twenty-six years (see paragraphs 33 and 34 above). In these circumstances, the Court finds that the applicant could not have any "legitimate expectation" to acquire the disputed plot of land through adverse possession.

42. In view of the above, the Court considers that the applicant had neither a "possession" nor a legitimate expectation of obtaining effective enjoyment of a property right within the meaning of Article 1 of Protocol No. 1 to the Convention. Consequently, the facts of the present case do not fall within the ambit of Article 1 of Protocol No. 1.

43. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 November 2021.

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Ilse Freiwirth Deputy Registrar	Jolien Schukking President