THIRD SECTION

CASE OF YERANOSYAN AND OTHERS v. ARMENIA

(Application no. 13916/06)

JUDGMENT

STRASBOURG

20 July 2010

FINAL

20/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yeranosyan and Others v. Armenia**,**

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

Josep Casadevall, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges,*

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 13916/06) 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 eight Armenian nationals, Mr Vahan Yeranosyan, Mr Vardan Yeranosyan, Ms Ruzanna Yeranosyan, Mr Taron Yeranosyan, Ms Syuzanna Yeranosyan, Mr Arsen Grigoryan, Ms Lilit Grigoryan and Ms Siranush Khachatryan, ("the applicants"), on 21 March 2006.

2. The applicants were represented 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.

3. On 28 September 2007 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1976, 1975, 1971, 2001, 2004, 1994, 1999 and 1978 respectively and live in Yerevan.

5. According to the applicants, they enjoyed a right of use of accommodation in respect of a house which measured 60.2 sq. m and was

situated at 15 Byuzand Street, Yerevan. The house was owned by their family member, A.Y. The Government contested this allegation and claimed that only the applicants Vahan Yeranosyan, Vardan Yeranosyan, Ruzanna Yeranosyan and Siranush Khachatryan enjoyed such a right, while the remaining applicants, who were minors, were only entitled to live in the house in question.

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 decided to contract 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 by a letter of 8 June 2005 Vizkon Ltd informed the applicants that the house in question was situated within the expropriation zone of the Main Avenue area and was to be taken for State needs. It further appears that each applicant was offered USD 2,000 as compensation.

10. It appears that the applicants did not accept this offer.

11. On an unspecified date Vizkon Ltd instituted proceedings against the applicants on behalf of the State, seeking to terminate their right of use of accommodation and to have them evicted.

12. On 30 June 2005 the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) granted the claim of Vizkon Ltd, terminating the applicants' right of use and awarding each of them the Armenian dram equivalent of USD 2,000 in compensation. In doing so, the court referred to Article 218 § 1 of the Civil Code.

13. On 15 July 2005 the applicants lodged an appeal.

14. On 8 August 2005 the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) granted the claim of Vizkon Ltd on the same grounds as the District Court.

15. On 22 August 2005 the applicants lodged an appeal on points of law which they supplemented on 19 September 2005.

16. On 23 September 2005 the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) dismissed the applicants' appeal.

II. RELEVANT DOMESTIC LAW

17. For a summary of the relevant domestic provisions related to the right of use of accommodation see the judgment in the case of *Minasyan and Semerjyan v. Armenia* (no. 27651/05, §§ 36-43, 23 June 2009).

18. Article 218 § 1 of the Civil Code, as in force at the material time, provided that a plot of land might be taken from the owner for the needs of the State or the community by compensating its value. Depending on for whose needs a plot of land was to be taken, its value was to be compensated by either the State or the community.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

19. The applicants complained that the deprivation of their possessions was in violation of the guarantees of Article 1 of Protocol No. 1, 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. The parties' submissions

20. The Government submitted that the applicants' complaint was incompatible *ratione materiae* with the provisions of Article 1 of Protocol No. 1. In particular, the applicants did not have possessions within the meaning of that Article, since they did not have a right of ownership in respect of the house in question. The sole owner of the house was a third person, A.Y., and the applicants enjoyed only a right of use of accommodation in respect of the house, which was equal to an entitlement to reside there and could not be considered equivalent to "possessions".

21. Furthermore, the applicants Taron Yeranosyan, Syuzanna Yeranosyan, Arsen Grigoryan and Lilit Grigoryan did not enjoy independently even a right of use because they were minors and enjoyed only the right to live in the house together with their parents – the other

applicants – by virtue of Section 16 of the Children's Rights Act. In sum, the applicants' complaint fell outside the scope of Article 1 of Protocol No. 1.

22. The applicants failed to submit their observations on the admissibility and merits within the required time-limit.

B. The Court's assessment

1. Admissibility

23. The Court considers that the Government's objection regarding the incompatibility of the applicants' complaint with the provisions of Article 1 of Protocol No. 1 is closely linked to the substance of their complaint under that Article, and should be therefore joined to the merits.

24. The Court notes that the applicants' complaint under Article 1 of Protocol No. 1 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Whether there was an interference with the applicants' possessions

25. The Court notes that the Government claimed that the applicants did not have "possessions" within the meaning of Article 1 of Protocol No. 1. The Court points out, however, that it has already found that the right of use of accommodation constituted a "possession" within the meaning of that Article (see *Minasyan and Semerjyan v. Armenia*, cited above, § 56).

26. As regards specifically the applicants Taron Yeranosyan, Syuzanna Yeranosyan, Arsen Grigoryan and Lilit Grigoryan, the Court observes that the Government's claim has no basis in the findings of the domestic courts, which found that all the applicants enjoyed a right of use of accommodation and decided to terminate that right through payment of compensation.

27. The Court concludes that all the applicants in the present case enjoyed a right of use of accommodation in respect of the house in question and the termination of that right for the purpose of implementing construction projects in the centre of Yerevan amounted to an interference with the applicants' peaceful enjoyment of their possessions in the form of deprivation of property (*ibid.*, §§ 59 and 61). The Government's objection regarding the incompatibility of the applicants' complaint with the provisions of Article 1 of Protocol No. 1 must therefore be dismissed.

(b) Whether the interference with the applicants' possessions was justified

28. The Court reiterates 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 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". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII).

29. The Court further reiterates that the phrase "subject to the conditions provided for by law" requires in the first place the existence of and compliance with adequately accessible and sufficiently precise and foreseeable domestic legal provisions (see *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 110, Series A no. 102; *Hentrich v. France*, 22 September 1994, § 42, Series A no. 296-A; and *Beyeler v. Italy* [GC], no. 33202/96, § 109, ECHR 2000-I).

30. The Court notes that it has previously examined a complaint concerning the termination of the right of use by the courts with reliance on Article 225 of the Civil Code for the purpose of the implementation of construction projects in the centre of Yerevan and found that such interference with the applicants' possessions was arbitrary and unlawful (see *Minasyan and Semerjyan*, cited above, § 75-76).

31. The Court observes that in the present case the applicants' right of use in respect of the house in question was terminated by the courts for the same purpose, albeit with reference to Article 218 § 1 of the Civil Code. The Court notes, however, that this Article spoke solely of the possibility of terminating the right of ownership in respect of land and contained no mention whatsoever of terminating the right of use of accommodation (see paragraph 18 above). Thus, it appears that the applicants' right of use was terminated with reliance on legal rules which were not applicable to their case. The Court considers that such termination of their right of use was bound to result in an unforeseeable or arbitrary outcome and must have deprived the applicants of effective protection of their rights. It therefore cannot but describe the interference with the applicants' possessions on such a legal basis as arbitrary and unlawful (see, *mutatis mutandis*, *Minasyan and Semerjyan*, cited above, § 75-76).

32. This conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52, and *Iatridis v. Greece* [GC], no. 31107/96, § 62, ECHR 1999-II).

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. The applicants further complained that the deprivation of their possessions amounted also to a violation of Article 8 of the Convention and that the court proceedings were conducted in violation of the fair trial guarantees of Article 6 of the Convention.

35. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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."

37. The applicants submitted a claim for just satisfaction outside the time-limit prescribed by the Court. Accordingly, the Court considers that there is no call to award them any sum on that account (see, for example, *TV Vest AS and Rogaland Pensjonistparti v. Norway*, no. 21132/05, § 80, 11 December 2008, and *Maruszak v. Poland*, no. 11253/07, § 62, 7 July 2009).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection concerning the incompatibility of the applicants' complaint under Article 1 of Protocol No. 1 with the provisions of that Article and to dismiss it;

2. *Declares* the complaint concerning the deprivation of the applicants' possessions admissible under Article 1 of Protocol No. 1 and the remainder of the application inadmissible;

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

4. *Holds* that there is no call to award the applicants any sum for just satisfaction.

Done in English, and notified in writing on 20 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President