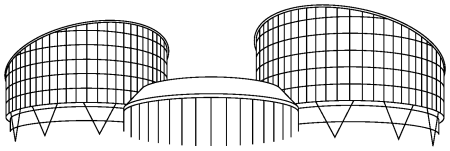

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KAREN POGHOSYAN v. ARMENIA

(Application no. 62356/09)

JUDGMENT
(*Just satisfaction*)

STRASBOURG

29 March 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.
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In the case of Karen Poghosyan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Aleš Pejchal,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 6 March 2018,

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

PROCEDURE

1. The case originated in an application (no. 62356/09) 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 Karen Poghosyan ("the applicant"), on 18 November 2009.

2. In a judgment delivered on 31 March 2016 ("the principal judgment"), the Court held that the quashing of the final judgment of 8 June 2001, as a result of which the applicant had been deprived of his possessions, including a plot of land, had violated the guarantees of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Karen Poghosyan v. Armenia*, no. 62356/09, §§ 45-53, 31 March 2016).

3. Under Article 41 of the Convention the applicant sought 92,000 euros (EUR) in respect of pecuniary damage, this allegedly being the market value of the property of which he had been deprived as a result of the quashing. He further sought EUR 2,000 in respect of non-pecuniary damage.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 57, and point 4 (a) and (b) of the operative provisions).

5. The applicant and the Government each filed observations.

THE LAW

6. 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

7. The applicant initially maintained his claim for pecuniary damage. In the meantime, he sought a reopening of his case on the basis of the principal judgment. His requests for reopening lodged with the Court of Cassation on 22 September 2016 were successful and, as a result, the case was remitted to the Civil Court of Appeal for a re-examination. Following this re-examination the Civil Court of Appeal decided to reverse its earlier judgments and to restore the applicant's right to the property of which he had been deprived. On 14 September 2017 the applicant's ownership was officially registered in respect of the property in question. By a letter of 28 October 2017 to the Court, the applicant accepted that his property rights had been restored. He nevertheless wished to maintain his claim for non-pecuniary damages in the amount of EUR 2,000.

8. The Government drew the Court's attention to the fact that the judgments, which had violated the applicant's rights, had been overturned and his property rights had been restored. Thus, having regard to the efforts made by the authorities to restore the applicant's rights in a smooth and timely manner, the Government argued that the claim for non-pecuniary damages was unreasonable and the finding of a violation, coupled with the restoration of the applicant's property rights, constituted adequate compensation.

9. The Court considers, first of all, that the question of pecuniary damage has been resolved in the present case. As regards the claim for non-pecuniary damage, the Court appreciates the undoubtedly positive development that the applicant was able to obtain restitution of the property in question. Nevertheless, it cannot overlook the fact that for at least six years the applicant was deprived of the possibility of enjoying his possessions, causing non-pecuniary damage not made good by the restitution. Ruling on an equitable basis, it awards the applicant EUR 1,000.

B. Costs and expenses

10. The applicant also claimed EUR 1,410 for the costs of his legal representation in the reopening proceedings instituted on 22 September 2016. He submitted a copy of the contract signed on 10 September 2016

with his lawyer, whereby he was obliged to pay the above-mentioned sum within fifteen days of the delivery of the Court's judgment on just satisfaction.

11. The Government argued, firstly, that the applicant had failed to show that he had actually incurred the costs in question, not having submitted any evidence, such as an invoice or a bank transfer order. Secondly, the alleged costs concerned the period after the delivery of the principal judgment and therefore fell outside the scope of the applicant's initial complaints. Lastly, should the Court consider that an award must be made, the amount claimed by the applicant was excessive.

12. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. This may include domestic legal costs actually and necessarily incurred to prevent or redress the breach of the Convention (see *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, no. 11002/05, § 58, 27 February 2007). As regards the Government's first objection, the Court notes that it has already examined and rejected a similar argument in a number of cases against Armenia (see *Saghatelyan v. Armenia*, no. 7984/06, §§ 61-63, 20 October 2015, and *Safaryan v. Armenia*, no. 576/06, §§ 62-64, 21 January 2016). Furthermore, as noted above, in the proceedings in question the applicant sought, and obtained, redress in the form of restitution of the property, which made good for the violation of his property rights found in the principal judgment (see paragraph 9 above; see also, in that context, *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, §§ 34 et seq., Series A no. 330 B). Consequently, the Court finds it appropriate to award the legal costs claimed in their entirety.

C. Default interest

13. 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. *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, the following amounts, to be converted

into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,410 (one thousand four hundred and ten euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 March 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Linos-Alexandre Sicilianos
Deputy Registrar	President