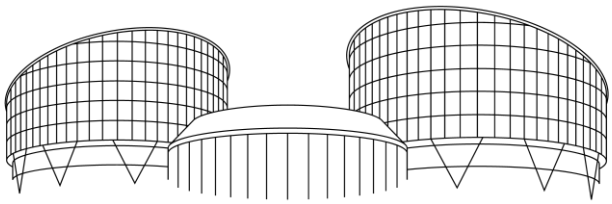

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DANIELYAN AND OTHERS v. ARMENIA

(Application no. 25825/05)

JUDGMENT

STRASBOURG

9 October 2012

FINAL

09/01/2013

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

In the case of Danielyan and Others v. Armenia,

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

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 18 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 25825/05) 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 Sisak Danielyan, Ms Kima Danielyan, Mr Andranik Danielyan, Ms Naira Danielyan, Ms Seda Danielyan, Ms Sona Danielyan, Ms Meri Danielyan and Ms Kristine Mnatsakanyan ("the applicants"), on 14 July 2005.

2. The applicants were represented by Mr V. 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. On 29 June 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1949, 1951, 1976, 1977, 1984, 1993, 2003 and 1981 respectively and live in Yerevan.

5. Mr Sisak Danielyan, Ms Kima Danielyan, Mr Andranik Danielyan, Ms Naira Danielyan, Ms Seda Danielyan and Ms Sona Danielyan jointly owned a house measuring 130 sq. m. situated at 11 Byuzand Street,

Yerevan. The applicants alleged that Ms Meri Danielyan and Ms Kristine Mnatsakanyan, as members of their family, enjoyed a right of use in respect of this house, while the Government contested this allegation and claimed that they did not enjoy the right of use in respect of the house and simply had the right to live in it.

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 adopted Decree no. 909-N, contracting out the construction of one of the sections of Byuzand Street – which was to be renamed as Main Avenue – to a private company, Glendale Hills CJSC.

8. On 28 July 2004 Glendale Hills CJSC 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 Glendale Hills CJSC attempted to organise a measuring and valuation of the applicants' house in order to offer them compensation for the purposes of expropriation, unsuccessfully, since the applicants created obstacles.

10. On 10 March 2005 Glendale Hills CJSC instituted proceedings on behalf of the State against all the applicants except one (Ms Kristine Mnatsakanyan), seeking to oblige them to allow a valuation of their house and sign an agreement on taking of their property for State needs based on the results of such valuation, and to evict them.

11. On 15 March 2005 all the applicants except one (Ms Meri Danielyan) lodged a counter-claim in which they contested the constitutionality of Government Decree no. 1151-N. They submitted, *inter alia*, that this Decree contradicted Article 28 of the Constitution, according to which property could be expropriated only through the adoption of a law concerning the property in question. They further submitted that the Government was not authorised under the same Article to decide on the expropriation of property.

12. On the same date the Kentron and Nork-Marash District Court of Yerevan granted the claim of Glendale Hills CJSC, ordering that the defendants be evicted through payment of compensation. The amount of compensation was to be estimated according to the market value following the relevant valuation. The District Court also ordered that they pay court fees in the amount of 4,000 Armenian drams (AMD). It appears that the

District Court refused to admit the applicants' counter-claim on the ground that it was not competent to decide upon the constitutionality of Government Decree no. 1151-N.

13. On 29 March 2005 the defendant applicants lodged an appeal.

14. It appears that on 18 April 2005 Orran Ltd real estate company carried out a valuation of the house in question, which was valued at the Armenian dram equivalent of USD 82,600.

15. On 21 April 2005 the Court of Appeal granted the claim of Glendale Hills CJSC. The Court of Appeal found that the defendants were obliged to give up their ownership through payment of compensation and decided to terminate their ownership by awarding them the Armenian dram equivalent of USD 82,600.

16. On 5 May 2005 the seven applicants in question lodged an appeal on points of law. On 13 May 2005 they filed additional submissions to their appeal, arguing, *inter alia*, that the deprivation of their property was in violation of Article 28 of the Constitution.

17. On 27 May 2005 the Court of Cassation dismissed the applicants' appeal.

II. RELEVANT DOMESTIC LAW

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

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. Admissibility

1. Request to strike out the application

20. Following unsuccessful friendly settlement negotiations the Government informed the Court, by letter dated 10 September 2009, that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application by offering the applicants, instead of the amount of AMD 37,206,344 transferred to their bank account on the basis of the court judgment, a redecorated apartment measuring 130 sq. m**.** in a building in Yerevan, the construction works of which would be finished in 2010, and also a sum of money. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

21. In an undated letter the applicants objected to the Government's declaration. They submitted that, firstly, their case raised issues which had not been determined by the Court in the past. Secondly, there was a disagreement between the parties regarding the facts of the case, namely the scope of their possessions. Thirdly, the redress proposed by the Government was inadequate and insufficient. It was not comparable to the size and location of the expropriated property and did not take into account the *de facto* deprivation of land. Furthermore, the proposal lacked concrete details and involved a lengthy implementation period and an arbitrary calculation of the amount of rent.

22. 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).

23. The Court points out 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".

24. 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.

25. 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). It does not, however, consider it necessary to rule on the entirety of the parties' arguments on the matter for the following reason.

26. Turning to the nature of the proposed redress, the Court notes that the Government have proposed, instead of the amount already paid to the applicants, to provide them with a new flat and a sum of money. 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 applicants. Thus, this undertaking could not be considered truly unilateral as its implementation was predicated on the other party's fulfilment of certain additional requirements (for an identical situation, see *Yedigaryan v. Armenia* (dec.), no. 10446/05, § 35, 15 November 2011, and *Yeranosyan v. Armenia* (dec.), no. 3309/06, § 24, 15 November 2011). Furthermore, the Government failed to provide sufficient details of the flat in question (similarly, see *Yedigaryan*, cited above, and *Yeranosyan*, cited above).

27. The Court therefore rejects the Government's request to strike the application out under Article 37 § 1 (c) of the Convention.

2. Victim status of the applicants Meri Danielyan and Kristine Mnatsakanyan

28. The Government submitted that the applicants Meri Danielyan and Kristine Mnatsakanyan could not claim to be victims of an alleged violation of Article 1 of Protocol No. 1 because they did not have any "possessions" within the meaning of that provision. In particular, the applicants Meri Danielyan and Kristine Mnatsakanyan did not enjoy any property rights in respect of the house owned by the remaining applicants, including the right of use of accommodation. The latter right, pursuant to Article 225 of the Civil Code, could arise only from the moment of State registration. However, there was no evidence to show that the applicants Meri Danielyan and Kristine Mnatsakanyan had such a right registered at the Real Estate Registry. Thus, the only right enjoyed by them was the right to live in the house in question, pursuant to Article 47 of the Family Code and Section 16

of the Children's Rights Act. This right, however, could not be considered as "possessions" within the meaning of Article 1 of Protocol No. 1.

29. The applicants Meri Danielyan and Kristine Mnatsakanyan submitted that they enjoyed the right of use of accommodation in respect of the house owned by the remaining applicants. There was well-established case-law of the appeal and cassation courts in Armenia which, pursuant to Articles 54 and 120 of the Housing Code, recognised the right of use of accommodation based on three factors: (1) being a member of the family of the owner of the accommodation, (2) living in that accommodation, and (3) running a joint household with the owner. All these three factors existed in their case. The applicant Meri Danielyan, who was the daughter of the applicant Andranik Danielyan, acquired this right upon her birth in 2003, while the applicant Kristine Mnatsakanyan, who was his spouse, acquired this right following their marriage. Moreover, their enjoyment of that right was not disputed in the course of the domestic proceedings.

30. Admitting that their right of use of accommodation was not registered at the Real Estate Registry, the applicants Meri Danielyan and Kristine Mnatsakanyan submitted that that right was valid even without State registration since, pursuant to Section 41 of the Law on the State Registration of Rights in Respect of Property, rights of spouses, children and other dependants in respect of property, which were conferred on them by law, were effective without such registration. In any event, they were not able to register that right, even if they wanted to, because Government Decree no. 1151-N had placed limitations on the house in question which precluded any transactions from being registered at the Real Estate Registry.

31. The applicant Meri Danielyan lastly submitted that her enjoyment of the right of use of accommodation was also confirmed by the fact that the plaintiff sought to terminate her property rights in respect of the house through payment of monetary compensation by resorting to courts.

32. The Court observes that the applicant Meri Danielyan was engaged as a plaintiff in the court proceedings seeking to terminate the ownership right in respect of the house. Furthermore, the domestic courts, when ordering such termination, explicitly referred, among other applicants, to the applicant Meri Danielyan. Thus, the enjoyment by the applicant Meri Danielyan of property rights, in this case the right of use of accommodation, was acknowledged by the domestic courts, which decided to award her compensation for the termination of that right. It follows that the Government's assertions to the contrary have no basis in the findings of the domestic courts. The Court reiterates in this respect that it has already found the right of use of accommodation to constitute a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Minasyan and Semerjyan*, cited above, § 56). The Government's objection, as far as it concerns the applicant Meri Danielyan, must therefore be dismissed.

33. Different considerations, however, apply to the applicant Kristine Mnatsakanyan. She was never engaged as a plaintiff in the expropriation proceedings, nor did the court judgments refer to or otherwise explicitly affect her rights. She herself never attempted to join the proceedings in question and to claim a violation of her alleged right of use of accommodation. There is no material before the Court which would indicate that she indeed enjoyed such a right. The Court therefore accepts the Government's objection as far as the applicant Kristine Mnatsakanyan is concerned and declares the application in this part inadmissible.

3. Conclusion

34. The Court notes that this complaint, as far as it concerns the first seven applicants, 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

35. The applicants submitted that the deprivation of their possessions was not carried out under the conditions provided for by law since it had been effected in violation of the guarantees of Article 28 of the Constitution.

36. The Government submitted that Article 28 of the Constitution was not applicable to the applicants' case.

37. 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 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". 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). 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 domestic legal provisions (see *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 110, Series A no. 102).

38. The Court notes that it has already examined identical complaints and arguments in another case against Armenia and concluded that the deprivation of property and the termination of the right of use were not carried out in compliance with "conditions provided for by law" (see *Minasyan and Semerjyan*, cited above, §§ 69-77). The Court does not see any reason to depart from that finding in the present case.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

40. The applicants also raised a number of complaints under Articles 6 and 8 of the Convention.

41. 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

42. 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

43. In respect of pecuniary damage the applicants Sisak Danielyan, Kima Danielyan, Andranik Danielyan, Naira Danielyan, Seda Danielyan and Sona Danielyan claimed 3,002,092.90 euros (EUR) as the value of the expropriated property, while the applicant Meri Danielyan claimed EUR 14,565.40 as the value of her terminated right of use. They left the question of non-pecuniary damage to the Court's discretion.

44. The Government did not comment on these claims.

45. The Court notes that it has previously awarded pecuniary damages in an identical situation (see *Minasyan and Semerjyan v. Armenia* (just satisfaction), no. 27651/05, §§ 17-21, 7 June 2011), which it finds to be fully applicable to the present case. Using the same approach and making an assessment based on all the materials at its disposal, the Court estimates the pecuniary damage suffered at EUR 85,000 and decides to award this amount jointly to the applicants Sisak Danielyan, Kima Danielyan, Andranik Danielyan, Naira Danielyan, Seda Danielyan, Sona Danielyan and Meri Danielyan, while dismissing the remainder of their claim. It further decides to award each of these applicants EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

46. The applicants also claimed AMD 4,000 for the costs and expenses incurred before the domestic courts, namely the court fee they had been obliged to pay.

47. The Government did not comment on this claim.

48. The Court decides to award the sum of EUR 6 for costs and expenses in the domestic proceedings.

C. Default interest

49. 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 complaint concerning the deprivation of property of all the applicants, except the applicant Kristine Mnatsakanyan, admissible under Article 1 of Protocol No. 1 and the remainder of the application inadmissible;

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

3. *Holds*

(a) that the respondent State is to pay, 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 Armenian drams at the rate applicable at the date of settlement:

(i) EUR 85,000 (eighty-five thousand euros) to the applicants jointly, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 6 (six euros) to the applicants jointly, plus any tax that may be chargeable to them, 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President