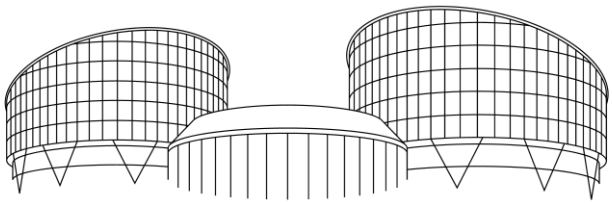

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

THIRD SECTION

CASE OF MINASYAN AND SEMERJYAN v. ARMENIA

(Application no. 27651/05)

JUDGMENT
(*merits*)

STRASBOURG

23 June 2009

FINAL

23/09/2009

This judgment may be subject to editorial revision.

In the case of Minasyan and Semerjyan v. Armenia**,**

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

Josep Casadevall, *President*,
Elisabet Fura-Sandström,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 2 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 27651/05) 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 two Armenian nationals, Ms Nelli Minasyan ("the first applicant") and Ms Yelena Semerjyan ("the second applicant"), on 1 July 2005.

2. The first and the second applicants (jointly, "the applicants") were represented by Ms L. 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 2 July 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 first and the second applicants, who are mother and daughter, were born in 1960 and 1990 respectively and live in Los Angeles, USA.

5. The first applicant was the owner of a 26 sq. m. flat in an apartment building situated at 9 Byuzand Street, Yerevan. The flat was acquired by the

first applicant on 30 May 1995. The building in question was situated on a plot of land owned by the State.

6. The applicants alleged that the second applicant enjoyed a right of use in respect of the above flat as the first applicant's family member residing in it.

7. The Government contested this allegation and claimed that the second applicant did not enjoy the right of use in respect of the first applicant's flat and simply had the right to live in it.

8. On 5 October 2001 the Government adopted Decree no. 950, approving the procedure for taking plots of lands and immovable property situated within expropriation zones of Yerevan and for preparing the relevant price offers. The Mayor of Yerevan was entrusted with its implementation. According to that Decree, the amount of compensation was to be determined on the basis of the market value of the immovable property, which was to be determined by a licensed valuation organisation or organisations selected through a tender process. Financial incentives were envisaged for those proprietors who, within ten days of receiving the price offer, gave their consent to hand over their property. Persons who were registered within the expropriation zones and their minor children were to be awarded 2,000,000 Armenian drams (AMD) as a support.

9. 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.

10. On 4 March 2004 the Government adopted Decree no. 399-N, authorising the Mayor of Yerevan, for the purpose of facilitating the construction works in the expropriation zones, to include in the compensation offers in specific cases the grant of construction permits without a tender process through direct negotiations.

11. On 17 June 2004 the Government adopted Decree no. 909-N, authorising the Mayor of Yerevan to grant such a construction permit for one of the sections of Byuzand Street – which was to be renamed Main Avenue – to a private company, Glendale Hills CJSC.

12. 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.

13. On 23 December 2004 Glendale Hills CJSC informed the first applicant that her flat was situated in the expropriation zones approved by Government Decree no. 1151-N. An independent licensed organisation,

Orran Ltd, had carried out a valuation of her property, in accordance with the procedure prescribed by Government Decree no. 950. According to the valuation report prepared by Orran Ltd, the sum of compensation to be paid to her was the Armenian dram equivalent of 7,000 US dollars (USD). An additional sum equivalent to USD 6,720 would be paid to her as a financial incentive, if she agreed to sign an agreement and to hand over the property within the following five days. The sum of compensation and the financial incentive to be paid to the second applicant, pursuant to Government Decree no. 950, amounted to the equivalent of USD 2,000 and USD 1,500 respectively.

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

15. On an unspecified date, Glendale Hills CJSC instituted court proceedings against the applicants on behalf of the State. Referring to, *inter alia*, Government Decree no. 1151-N, the plaintiff argued that the construction project of the Main Avenue, which was supposed to replace Byuzand Street, was impossible without demolition of the building in which the flat in question was situated and sought to terminate the applicants' rights through payment of compensation and to evict them. In support of its claim, the plaintiff submitted the valuation report prepared by Orran Ltd.

16. On 3 February 2005 the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) granted the claim of Glendale Hills CJSC. The District Court found that it had been decided by the authorities to take the relevant plot of land for State needs, which was impossible without terminating the applicants' rights in respect of the immovable property situated on that land. It decided to terminate the first and the second applicant's rights and to award them the Armenian dram equivalent of USD 7,000 and USD 2,000 respectively as compensation. The court based its findings on Articles 218, 225 § 2 and 283 of the Civil Code, while the amount of compensation awarded to the first applicant was determined on the basis of the valuation report prepared by Orran Ltd.

17. On an unspecified date, the applicants lodged an appeal.

18. The first applicant alleged that, in the proceedings before the Civil Court of Appeal, she filed a motion requesting the court to order a commodity expert opinion in order to contest the valuation carried out by Orran Ltd. This motion was allegedly rejected by the Court of Appeal.

19. On 18 April 2005 the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) upheld the judgment of the District Court.

20. On 29 April 2005 the applicants lodged an appeal on points of law. In their appeal they argued, *inter alia*, that the ownership in respect of the flat had been unlawfully terminated by a Government decree and not a statute, as required by the domestic law.

21. On 27 May 2005 the Court of Cassation (ՀՀ վճռաբեկ դատարան) dismissed the applicants' appeal, referring to the findings of the lower courts.

22. On an unspecified date the flat in question was demolished.

II. RELEVANT DOMESTIC LAW

A. The domestic provisions related to the question of lawfulness of the interference

1. The Constitution of Armenia (adopted on 5 July 1995 through a referendum)

23. The relevant provisions of the Constitution, as in force at the material time, read as follows:

Article 5

"...Public authorities and public officials are competent to perform only such actions as authorised by law."

Article 6

"Armenia is a State based on rule of law.

The Constitution of [Armenia] has a supreme legal force and its provisions are directly applicable.

Laws which are found to be incompatible with the Constitution, as well as other legal acts which are found to be incompatible with the Constitution and laws, have no legal force. ..."

Article 28

"Every one has the right to property and the right to bequeath. ...[A person] can be deprived of [his or her] property only by a court in cases prescribed by law.

Property can be expropriated for the needs of society and the State only in exceptional cases of paramount public interest, on the basis of a law and with prior equivalent compensation."

Article 100

"The Constitutional Court, in accordance with a procedure prescribed by law: (1) decides on the conformity of the laws, the resolutions of the National Assembly,

the edicts and directives of the President of [Armenia] and the decrees of the Government with the Constitution; ...”

2. The Law on Legal Acts (in force from 31 May 2002)

24. The Law on Legal Acts prescribes the types and hierarchy of legal acts in Armenia. The relevant provisions of the Law, as in force at the material time, provided as follows.

25. Section 4 listed the legal acts adopted in Armenia which included, *inter alia*, the Armenian Constitution, the Armenian laws and the decrees of the Government.

26. Section 8 provided that the Constitution laid down the principles of legal regulation on the territory of Armenia and was the legal foundation of the Armenian legislation. It had supreme legal force and its provisions were directly applicable. The laws and other legal acts were adopted on the basis of the Constitution or for the purpose of its implementation and were not to contradict it.

27. Section 9 provided that laws regulated the most important, inherent and stable social relations and were enacted in compliance with the Constitution through a referendum or by the National Assembly. They were not to contradict the Constitution, the active laws and the decisions of the Constitutional Court.

28. Section 14 provided that the Government adopted decrees within the scope of the powers vested in it by the Constitution and the laws. The decrees of the Government were not to contradict the Constitution, the laws and the decisions of the Constitutional Court. They were to regulate any relations not regulated by the laws, unless those relations, pursuant to the Constitution and the laws or the edicts and directives of the President of Armenia, were to be regulated by other legal acts.

3. The Constitutional Court Act (in force from 8 December 1995 to 1 July 2006)

29. Section 64 of the Constitutional Court Act provided that the decisions of the Constitutional Court were final and not subject to appeal. They entered into force from the moment of their delivery and had a binding effect on the territory of Armenia.

4. The Civil Code (in force from 1 January 1999) and the Land Code (in force from 15 June 2001)

30. Articles 218-221 of the Civil Code and Articles 104 and 108 the Land Code, as in force at the material time, stipulated the conditions for taking plots of land for the needs of society and the State.

31. Article 283 of the Civil Code provided that, if it was impossible to take a plot of land for the needs of society and the State without terminating

the ownership in respect of buildings, constructions and other immovable property situated on it, the State could take such property from the owner by compensating its value.

5. The Immovable Property Act (in force from 25 January 1996 to 1 January 1999)

32. The provisions of the Immovable Property Act, the conformity of which with the Constitution was examined by the Constitutional Court on 27 February 1998 (see paragraph 33 below), provided:

Section 22: Expropriation of immovable property for the needs of society and the State

"...[2.] The equivalent amount of compensation for expropriation of immovable property for the needs of society and the State is determined by a decree of the Government of [Armenia] on the basis of the results of the negotiation between the Government of [Armenia] and the owner of the property subject to expropriation and upon [the owner's] written consent.

[3.] If the owner of the property disagrees with the expropriation of the property by the Government of [Armenia] or the amount of compensation, then the immovable property may be expropriated by the Government of [Armenia] only through court proceedings.

[4.] The owner of the immovable property subject to expropriation for the needs of society and the State must abstain from causing damage to the immovable property before the entry into force of the court decision.

[5.] The procedure for expropriation of immovable property for the needs of society and the State is established by the Government of [Armenia], pursuant to the provisions of this Section. ..."

*6. The Decision of the Constitutional Court of 27 February 1998 on the Conformity of Paragraphs Two, Three, Four and Five of Section 22 of the Immovable Property Act adopted by the National Assembly on 27 December 1995 with Articles 8 and 28 of the Constitution (*ՀՀ սահմանադրական դատարանի 1998 թ. փետրվարի 27-ի որոշումը Ազգային ժողովի կողմից 1995 թ. դեկտեմբերի 27-ին ընդունված «Անշարժ գույքի մասին» ՀՀ օրենքի 22 հոդվածի երկրորդ, երրորդ, չորրորդ և հինգերորդ մասերի՝ ՀՀ սահմանադրության 8 հոդվածին և 28 հոդվածի երկրորդ մասին համապատասխանության հարցը որոշելու վերաբերյալ գործով*)*

33. When deciding on the conformity of paragraphs 2, 3, 4 and 5 of Section 22 of the Immovable Property Act with, *inter alia*, Article 28 of the

Constitution, the Constitutional Court provided the following interpretation of that provision. Since the phrases "for the needs of society and the State" and "only in exceptional cases" were concepts requiring assessment and concerned a fundamental constitutional right, the Constitution stipulated that expropriation of property on such grounds could be carried out only on the basis of a law, thereby creating necessary legislative safeguards. The phrase "on the basis of a law" implied not a normative legal act which regulated the expropriation procedure in general, but a law pursuant to which the property in question was to be expropriated. Thus, a person's property could be expropriated and – in the absence of his consent – his ownership could be terminated by the State only through the adoption of a law in respect of the concrete immovable property, which would substantiate the exceptional importance and significance of the expropriation and which would indicate the needs of society and the State to be satisfied by the expropriation. The law would also oblige the Government to fix the amount of compensation, taking market prices into account, on the basis of a financial-economic assessment, the results of the negotiation between the Government and the owner of the property subject to expropriation, and upon the owner's written consent. The Government was not entitled to establish a procedure for expropriation of property for the needs of society and the State that would authorise it to expropriate immovable property.

*7. Government Decree no. 1151-N of 1 August 2002 Concerning the Implementation of Construction Projects Within the Administrative Boundaries of the Kentron District of Yerevan (*ՀՀ կառավարության 2002 թ. օգոստոսի 1-ի թիվ 1151-Ն որոշումը Երևանի Կենտրոն թաղային համայնքի վարչական սահմանում կառուցապատման ծրագրերի իրականացման միջոցառումների մասին*)*

34. For the purpose of implementation of construction projects in Yerevan, the Government decided to approve 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, with a total area of 345,000 sq. m. Byuzand Street was listed in Annex 2 to this Decree as falling within these expropriation zones.

35. The Mayor of Yerevan was instructed to determine the boundaries of the plots of land to be taken for the needs of the State and to register them at the Real Estate Registry. The owners and users of the immovable property situated within the expropriation zones were to be informed about the deadlines, sources of financing and the procedure for taking their

immovable property. Valuation of the immovable property in question was to be organised and carried out by the relevant licensed organisations.

B. The domestic provisions related to the right of use of accommodation

1. The Housing Code (in force from 1 July 1983 to 26 November 2005)

36. Article 54 provided that members of the tenant's family included his spouse, their children and their parents. Other persons could be recognised as the tenant's family members, if they lived with him or her and ran a common household.

37. Article 120 provided that family members of the owner of a house, whom the owner had accommodated in his or her house, had the right, equally with him or her, to use the accommodation, if no reservations had been made at the time when the family members were accommodated. Persons mentioned in the first sentence of Article 54 of this Code were considered as members of the owner's family. These persons were to continue to enjoy the right of use of accommodation even in case of disruption of family ties with the owner.

2. The Civil Code (in force from 1 January 1999)

38. Article 135, which concerns State registration of property rights, provides that the right of ownership and other property rights in respect of immovable property, including the right of use, are subject to State registration.

39. Chapter 14 of the Civil Code entitled "Ownership of Accommodation and Other Property Rights" contained specific provisions related to the right of use of accommodation which, at the material time, read as follows:

Article 225: The right of use of accommodation

"1. The family members of the owner of accommodation and other persons have the right of use of accommodation, if that right has been registered in accordance with the procedure prescribed by the Law on the State Registration of Rights in Respect of Property.

2. The origination, implementation and termination of the right of use of accommodation are stipulated by a notarised written agreement concluded with the owner.

If no agreement is reached concerning the termination of the right of use of accommodation, that right can be terminated upon the owner's request by a court through payment of compensation equivalent to the market value.

3. The right of use of accommodation may not be an object of sale or purchase, mortgage and lease.

4. The person enjoying the right of use of accommodation may demand from anybody, including the owner, to redress the violations of his [or her] right in respect of the accommodation.

5. The right of use of accommodation does not terminate in case of transfer of ownership in respect of a house or a flat to another person, except when the person enjoying the right of use of accommodation has undertaken a notarised obligation to give up that right prior to the transfer of ownership."

40. The above Article 225 was amended following the circumstances of the present case, namely on 4 October 2005, and its fourth paragraph read as follows:

"4. The amount of compensation for a one-month period is determined on the basis of the amount of rent payable for given accommodation at the moment of termination of the right [of use] and is calculated the following way: for each person, whose right of accommodation is registered, the area [is calculated] by means of dividing the living area by the total number of persons enjoying the right of gratuitous use of accommodation and the owners, but [should not be] less than five or more than nine square metres.

The compensation is calculated for a period of three years and is paid at once, unless agreed otherwise by the parties."

3. The Law on the State Registration of Rights in Respect of Property (in force from 6 May 1999)

41. Section 41 of the Law on the State Registration of Rights in Respect of Property provides that rights of spouses, children and other dependants in respect of property, which are conferred on them by law, are effective even if they have not been registered separately.

4. The Children's Rights Act (in force from 27 June 1996)

42. Section 16 of the Children's Rights Act provides that a child family member of the tenant or owner of accommodation, regardless of his or her place of residence, has the right to live in the accommodation occupied by that tenant or owner.

5. The Family Code (in force from 19 April 2005)

43. Article 47 of the Family Code provides, *inter alia*, that a child has no ownership in respect of his or her parents' property, while the parents have no ownership in respect of the child's property. Children and parents living together may dispose of and use each other's property by mutual agreement.

THE LAW

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

44. 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

45. The Government submitted that the second applicant could not claim to be a victim of an alleged violation of Article 1 of Protocol No. 1 because she did not have any "possessions" within the meaning of that provision.

46. The Court considers that the Government's objection regarding the second applicant's victim status is closely linked to the substance of her complaint under Article 1 of Protocol No. 1, and should be joined to the merits.

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

B. Merits

1. *Whether the second applicant had "possessions" within the meaning of Article 1 of Protocol No. 1*

(a) The parties' submissions

48. The second applicant submitted that she enjoyed the right of use of accommodation in respect of the flat owned by the first applicant. 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, which were not to be applied cumulatively, existed in her case. Moreover, her enjoyment of that right was not disputed in the course of the domestic proceedings.

49. Admitting that her right of use of accommodation was not registered at the Real Estate Registry, the second applicant 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, she was not able to register that right, even if she wanted to, because Government Decree no. 1151-N had placed limitations on the flat in question which precluded any transactions from being registered at the Real Estate Registry.

50. The second applicant further submitted that it was explicitly stated in the draft agreement on taking property presented by the plaintiff to the domestic courts that "The implementer awards the registered person financial incentive for terminating her rights and vacating the immovable property". Thus, the authorities recognised the existence of a valuable right which they sought to terminate through signing the above agreement. Furthermore, the right of use of accommodation was considered a property right under the Armenian law. It was an autonomous right which existed independently from the right of ownership and could be terminated only through the payment of adequate compensation. It therefore constituted an asset which was to be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1.

51. The Government submitted that the second applicant did not enjoy any property rights in respect of the flat owned by the first applicant, 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 second applicant had such a right registered at the Real Estate Registry. Thus, the only right enjoyed by the second applicant was the right to live in the flat 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.

(b) The Court's assessment

52. The Court notes at the outset that the main disagreement between the parties concerns the question whether the second applicant enjoyed the right of use of accommodation in respect of the flat owned by the first applicant.

In support of their arguments the parties referred to various domestic legal provisions.

53. In this respect, the Court observes that the domestic courts, when deciding to terminate the applicants' rights in respect of the flat in question, made reference, *inter alia*, to the second paragraph of Article 225 of the Civil Code which stipulates the conditions for termination of the right of use of accommodation. Thus, the enjoyment by the second applicant of the right of use of accommodation was implicitly 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 and must be dismissed.

54. While it is not in dispute between the parties whether the right of use of accommodation constitutes "possessions" within the meaning of Article 1 of Protocol No. 1, the Court, nevertheless, considers it necessary to address this question of its own motion.

55. The Court reiterates that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of material goods and is independent from the formal classification in domestic law. In the same way as material goods, certain other rights and interests constituting assets can also be regarded as "property rights" and thus as "possessions" for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II; *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; and *Broniowski v. Poland* [GC], no. 31443/96, § 129, ECHR 2004-V).

56. The Court observes that under the Armenian law the right of use of property is a distinct right listed among other property rights (see the domestic provisions cited in paragraphs 38 and 39 above). At the material time, a person having the right of use of accommodation continued to enjoy that right even in case of transfer of ownership in respect of the accommodation in question (Article 225 § 5 of the Civil Code). Furthermore, that right could be terminated only through payment of an adequate compensation (Article 225 § 2 of the Civil Code). The Court therefore considers that the right of use of accommodation enjoyed by the second applicant in respect of the flat owned by the first applicant was a distinct property right which involved a pecuniary interest and therefore constituted a "possession" within the meaning of Article 1 of Protocol No. 1. The fact that the second applicant was paid a sum of money as a result of the expropriation proceedings only reaffirms the Court's foregoing finding. Having reached this conclusion, the Court considers that the Government's objection regarding the applicant's victim status must be dismissed.

2. Whether there was an interference with the applicants' possessions

57. It was not in dispute between the parties that there had been an interference with the first applicant's peaceful enjoyment of her possessions.

58. As regards the second applicant, the Government submitted that, since the only right enjoyed by her was the right to live in the flat in question, there was no interference with her rights guaranteed by Article 1 of Protocol No. 1.

59. Having already established that the second applicant had "possessions" within the meaning of Article 1 of Protocol No. 1 (see paragraph 56 above), the Court considers that the termination of the first applicant's ownership and the second applicant's right of use in respect of the flat in question for the purpose of implementing construction projects in the centre of Yerevan undoubtedly amounted to an interference with the applicants' peaceful enjoyment of their possessions.

3. Whether the interference with the applicants' possessions was justified

(a) The applicable rule

60. Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, as a recent authority, *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

61. The Court considers that the termination of the first applicant's ownership and the second applicant's right of use amounted to a deprivation of their possessions. Accordingly, it is the second sentence of the first paragraph of Article 1 of Protocol No. 1 which is applicable in the instant case.

(b) Compliance with the conditions laid down in the second sentence of the first paragraph

(i) The parties' submissions

62. The applicants submitted that the deprivation of the first applicant's possessions was not carried out under "conditions provided for by law", namely Article 28 of the Constitution as in force at the material time. That provision provided that property could be expropriated "for the needs of society and the State in exceptional cases of paramount public interest, on the basis of a law and with prior equivalent compensation". When interpreting that provision in its decision of 27 February 1998 the Constitutional Court stated that a person could be deprived of his property only through the adoption of a law in respect of a concrete immovable property, which would substantiate the exceptional importance of the expropriation and which would indicate the needs of society and the State to be satisfied by the expropriation. The Constitutional Court further stated that the Government was not entitled to establish a procedure for the expropriation of property for the needs of society and the State.

63. However, no law was adopted in connection with the expropriation of the first applicant's property and the entire expropriation process was based on a number of Government decrees. Nor were the other conditions of the above Article 28 met. In particular, no needs of society or the State were mentioned in Government Decree no. 1151-N or the relevant provisions of the Civil Code and the Land Code. Furthermore, the first applicant was not offered a "prior equivalent compensation", while the amount of compensation offered to the second applicant was determined in an arbitrary manner. Lastly, the deprivation of the first applicant's property was in violation of the then Article 5 of the Constitution, since the Government exceeded its authority by unlawfully establishing the expropriation and valuation procedures, and granting itself extensive powers to expropriate property.

64. The applicants further submitted that the deprivation of the second applicant's possessions was also not carried out under "conditions provided for by law", namely Article 225 of the Civil Code. According to that provision, only the owner of a property could claim the termination of the right of use enjoyed by another person in respect of that property. In the present case, however, it was the Government that initiated the proceedings seeking to terminate the second applicant's right of use and therefore there was no legal basis to grant this claim.

65. The Government submitted that Article 28 of the Constitution was not applicable to the first applicant's case. That provision applied only to property which was subject to expropriation for the needs of society and the State. According to Articles 218-221 and 283 of the Civil Code and Articles 104 and 108 of the Land Code, only plots of land fell into the

category of property subject to expropriation for the needs of society and the State, but not the immovable property situated on that land. The termination of ownership of private persons in respect of houses or other constructions was therefore the result of the State taking land which belonged to it. In the present case, the first applicant did not own land but only a flat in the building situated on a plot of land which had to be taken for the needs of society and the State. Thus, her flat could not be considered as an object of expropriation for those needs and the compensation paid to her was to be viewed as damage awarded as a result of expropriation of the plot of land. In sum, Article 28 of the Constitution was not applicable to the present case.

(ii) The Court's assessment

66. 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). It follows that the issue of 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) becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

67. 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).

68. Turning to the circumstances of the present case, the Court notes that the first and the second applicants enjoyed and were deprived of two distinct rights, that of ownership and that of use of accommodation. The Court will therefore examine the question of compliance with the guarantees of Article 1 of Protocol No. 1 in respect of each applicant separately.

(α) The first applicant

69. The Court observes that the first applicant was the owner of a flat which measured 26 sq. m. and was part of a building situated at 9 Byuzand Street in the centre of Yerevan. On 1 August 2002 the Government of

Armenia adopted a decree, namely Decree no. 1151-N, deciding to expropriate the immovable property, such as plots of land, buildings and constructions, situated in certain central areas of Yerevan which were identified as "expropriation zones". This property was to be expropriated for the purpose of carrying out construction projects in Yerevan and Byuzand Street was listed as falling within one of these expropriation zones.

70. The Court further observes that, at the material time, the main domestic legal provision regulating the expropriation of property for public needs was Article 28 of the Constitution. The Government argued that this provision was not applicable to the first applicant's case. The Court, however, is not convinced by this argument. It notes that the first applicant was deprived of her property on the basis of an application lodged with the courts by a private company acting on behalf of the State for the purpose of implementation of Government Decree no. 1151-N. Hence, her ownership in respect of her flat was terminated for no other purpose than implementing the Government policy of carrying out construction projects in the centre of Yerevan. Furthermore, the domestic courts explicitly stated in their judgments that the first applicant's ownership was being terminated because the land on which her property was situated was to be taken for State needs. Here the Court does not share the Government's interpretation, according to which only the land but not the property situated on it should be considered as an object of expropriation. Moreover, it is not clear on what grounds the Government make such an assertion given that in the instant case the plot of land in question was public property and the only private property which was being taken by the State was that owned by the first applicant. Thus, the first applicant's case clearly falls into the category of situations covered by Article 28 of the Constitution.

71. The Court observes that one of the requirements of that constitutional provision, which had supremacy over all other legal acts, was that any expropriation of property for public needs be carried out "on the basis of a law". When interpreting this phrase in its decision of 27 February 1998 the Constitutional Court, whose decisions had binding effect, pointed out, in particular, that private property could be expropriated for public needs only through the adoption of a law in respect of the concrete property. Moreover, the word "law" (*օրենք*), as used by the Constitutional Court, denoted not just any legal act but a statute adopted by the parliament, thereby reserving the question of decision-making on specific cases of expropriation for public needs to the legislature. This interpretation was further reinforced by the Constitutional Court's finding that the Government, that is the executive branch, was not authorised to decide on the expropriation of private property for public needs (see paragraph 33 above).

72. Turning to the circumstances of the present case, the Court observes that no law was ever adopted by the Armenian parliament in respect of the

first applicant's property, as required by Article 28 of the Constitution, and the entire expropriation process, including the procedure for determination of the amount of compensation, was governed by a number of Government decrees. It follows that the deprivation of the first applicant's property was not carried out in compliance with "conditions provided for by law".

(β) The second applicant

73. The Court observes that the second applicant enjoyed the right of use in respect of the flat owned by the first applicant and this right was terminated by the courts with reference to second paragraph of Article 225 of the Civil Code.

74. The Court reiterates that the requirement of lawfulness means that rules of domestic law must be sufficiently accessible, precise and foreseeable (see, among other authorities, *Hentrich v. France*, 22 September 1994, § 42, Series A no. 296-A; *Beyeler v. Italy* [GC], no. 33202/96, § 109, ECHR 2000-I; and *Carbonara and Ventura v. Italy*, no. 24638/94, § 64, ECHR 2000-VI).

75. The Court notes that the above Article 225 § 2 contained rules on termination of a person's right of use of accommodation. Those rules, however, spoke of the possibility of terminating the right of use upon *the owner's* request and contained no mention whatsoever of terminating that right upon an application lodged by any person other than the owner, be it the State or, like in the present case, a private company acting on behalf of the State. Thus, it appears that the second applicant's right of use was terminated with reliance on legal rules which were not applicable to her case. The Court considers that such termination of her right of use was bound to result in an unforeseeable or arbitrary outcome and must have deprived the second applicant of effective protection of her rights. It therefore cannot but describe the interference with the second applicant's possessions on such a legal basis as arbitrary.

(γ) Conclusion

76. The Court concludes that the deprivation of the applicants' possessions was incompatible with the principle of lawfulness. 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, for example, *Iatridis v. Greece* [GC], no. 31107/96, § 62, ECHR 1999-II).

77. There has accordingly been a violation of Article 1 of Protocol No. 1 in respect of both applicants.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

78. The applicants complained that they had been placed at a substantial disadvantage vis-à-vis their opponent, because Glendale Hills CJSC was able to submit a valuation report in support of its arguments concerning the amount of compensation, while the first applicant's motion requesting a commodity expert opinion was arbitrarily rejected by the Civil Court of Appeal. The applicants relied on Article 6 § 1 of the Convention which, in so far as relevant, provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

79. The Court notes that the applicants did not submit any evidence in support of this complaint, such as copies of the alleged motion or of the Court of Appeal's alleged rejection of that motion. The Court observes that the case file as it stands contains no evidence to suggest that the trial was conducted in violation of the guarantees of Article 6 § 1 of the Convention.

80. The Court concludes that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

81. The applicants complained that the deprivation of their possessions amounted also to a violation of Article 8 of the Convention which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

82. Having regard to the conclusion reached on the applicants' complaint under Article 1 of Protocol No. 1 (see paragraphs 76 and 77 above), the Court does not need to examine their complaint under Article 8 of the Convention, for which reason it must be rejected pursuant to Article 35 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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."

84. The first applicant claimed a total amount of 150,150 euros (EUR) in respect of pecuniary damage. This amount was comprised of the market value of the flat amounting to EUR 133,467 and the loss of income amounting to EUR 16,683.

85. As regards the calculation of these amounts, the applicants alleged that they were unable to obtain any information from public authorities necessary for the effective presentation of their claims, because of public officials having economic interests in the construction projects and therefore blocking any access to the relevant official information. Nor was it possible to order an independent valuation of the expropriated property, since the valuation companies, being licensed by the authorities, feared reprisals, including a possible withdrawal of a licence, and refused to provide information.

86. In view of the above, according to the first applicant, the market value of the expropriated flat was to be calculated using the method of capitalisation of income and would therefore amount to AMD 62,400,000, which, according to the applicable exchange rate, was equivalent to EUR 133,467.

87. The first applicant further submitted she could have rented out her flat since May 2005, had it not been expropriated, for AMD 10,000 per square metre. Thus, her loss of income from that date until the submission of the claim for just satisfaction, namely November 2005, amounted to AMD 7,800,000 which, according to the applicable exchange rate, was equivalent to EUR 16,683.

88. The second applicant argued that the amount of compensation payable to her was to be calculated pursuant to the formula prescribed by the amended Article 225 of the Civil Code (see paragraph 40 above). Based on such a calculation, she claimed EUR 6,930 in respect of pecuniary damage, the Armenian equivalent of that sum, according to the applicable exchange rate, amounting to AMD 3,240,000.

89. The applicants also claimed EUR 25,000 for non-pecuniary damage and EUR 1,700 for costs and expenses.

90. The Government did not comment on these claims.

91. The Court considers that the question of the application of Article 41 is not ready for decision. The question must accordingly be reserved and the further procedure fixed with due regard to the possibility of agreement being reached between the Government and the applicants.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection concerning the second applicant's victim status and to dismiss it;

2. *Declares* the complaint concerning the deprivation of the applicants' possessions admissible and the remainder of the application inadmissible;

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

4. *Holds* that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicants to submit, within the three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 23 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President