CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 14156/07
by Versandik HAKOBYAN and Heghine AMIRKHANYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 3 March 2009 as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having regard to the above application lodged on 27 March 2007,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Versandik Hakobyan and Heghine Amirkhanyan, are Armenian nationals who were born in 1950 and 1958 respectively and live in Yerevan. They are represented before the Court by Mr A. Zohrabyan, Mr K. Mezhlumyan and Ms K. Ghulyan, lawyers practising in Yerevan.

A. The circumstances of the case

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

1. *Background to the case*

The applicants Hakobyan and Amirkhanyan (hereafter, the first and the second applicant) are husband and wife. They jointly owned a plot of land measuring 222 sq. m. and a house measuring 154.52 sq. m. which were situated at 10 (4/4) Abovyan Street, Yerevan. It appears that the applicants bought this property on 23 October 2001 for 84,466,500 Armenian drams (AMD) (approximately 167,250 euros (EUR) at the material time). In the ownership certificate issued in respect of this property on 7 November 2001 the first applicant was indicated as its sole owner.

On 25 November 2000 the Government adopted Decree no. 774 by which it approved a project presented by the Yerevan Mayor's Office (*Երևանի քաղաքապետարան*) to construct an avenue, the Northern Avenue (*Հյուսիսային պողոտա*), in the centre of Yerevan which would link the two main squares, Liberty Square and Republic Square. It appears that the idea of constructing the Northern Avenue dated back to the 1920s when the original town plan of Yerevan was conceived.

On 16 July 2001 the Government adopted Decree no. 645 by which it approved the alienation zone of the real estate situated in the Northern Avenue strip to be taken for State needs, having a total area of 82,700 sq. m.

On 1 August 2002 the Government adopted Decree no. 1151-N by which it modified its Decree no. 645 of 16 July 2001 and approved the alienation zone of the real estate situated within the administrative boundaries of the Kentron District of Yerevan to be taken for State needs, having a total area of 345,000 sq. m.

A special body, the "Yerevan Construction and Investment Project Implementation Agency" (*«Երևանի կառուցապատման ներդրումային ծրագրերի իրականացման գրասենյակ» պետական ոչ առևտրային կազմակերպություն* – "the Agency"), was set up to manage the implementation of the project.

2. *Proceedings concerning the expropriation of the applicants' property*

On an unspecified date the Agency requested a licensed valuation organisation, Artin Enterprise Ltd, to carry out a valuation of the property in question.

On 16 September 2005 Artin Enterprise Ltd prepared a preliminary valuation report without having had access to the premises. The market value of the property was found to be AMD 48,846,000 as at 15 September

2005. According to the cover letter of the manager of Artin Enterprise Ltd, this report could serve as a basis for a preliminary offer but not for the final agreement and compensation.

On 27 September 2005 the Agency informed the first applicant that the property in question was situated in the alienation zone and was to be taken for State needs. The first applicant was offered the above sum as compensation plus a financial incentive in the amount of AMD 14,653,800, if he agreed to sign an agreement within ten days from the date of receipt of the offer, signed such an agreement within a month and handed over the property within the period stipulated by that agreement.

On 10 October 2005 the Agency lodged a claim against the first applicant seeking to oblige him to sign an agreement on taking of the property for State needs for compensation in the amount of AMD 48,846,000.

On 28 October 2005 Artin Enterprise Ltd upon a court order carried out an additional valuation to determine the real market value of the property, having had access to it.

On 10 November 2005 Artin Enterprise Ltd prepared a valuation report, according to which the market value of the property was AMD 54,838,000 as at 28 October 2005.

On 16 November 2005 the Agency made a new proposal to the first applicant, offering him the above sum plus a financial incentive in the amount of AMD 16,451,400. It appears that the first applicant did not accept this offer.

On 6 December 2005 the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) granted the Agency's claim, ordering the first applicant to sign an agreement for a total amount of compensation of AMD 54,838,000 and to be evicted together with his family members.

On 21 December 2005 the first applicant lodged an appeal.

On 2 February 2006 the first applicant's lawyer addressed a letter to the Real Estate Registry, enquiring about the growth of real estate prices between the last quarter of 2001 and the last quarter of 2005.

By a letter of 7 February 2006 the Real Estate Registry informed the first applicant's lawyer that in the relevant period the average real estate prices per square metre in apartment buildings increased from AMD 134,000 to AMD 325,400 and in houses measuring up to 250 sq. m. and having an adjacent territory measuring up to 400 sq. m. from AMD 141,200 to AMD 340,700.

On 23 March 2006 a correction was made to the ownership certificate and the second applicant was added as a joint owner.

On 18 April 2006 the Constitutional Court (*ՀՀ սահմանադրական դատարան*) found, *inter alia*, Government Decree no. 1151-N of 1 August 2002 to be unconstitutional.

On 21 June 2006 the first applicant's lawyers filed written submissions with the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*), arguing, *inter alia*, that the market value of the property in question, as established by the valuation reports of Artin Enterprise Ltd, was seriously underestimated, given the growth in real estate prices during the previous five years as evidenced by the information provided by the Real Estate Registry. They also submitted that the second applicant was not engaged in the proceedings as a defendant despite the fact that she was a joint owner of the property in question and the fact that the District Court's judgment affected her ownership rights.

On 27 June 2006 Artin Enterprise Ltd carried out an additional valuation of the applicants' property upon the Agency's request.

It appears that at some point during the proceedings before the Court of Appeal the second applicant was engaged as a party by receiving a summons to appear at one of the hearings. It further appears that on 3 July 2006 she enquired with the Court of Appeal about her status in the proceedings.

On 4 July 2006 Artin Enterprise Ltd prepared a new valuation report, according to which the market value of the property was AMD 60,292,000 as at 27 June 2006 (approximately EUR 114,650 at the material time).

On 6 July 2006 the Agency made a new proposal to both applicants, offering them the above sum plus a financial incentive in the amount of AMD 18,087,600.

On the same date the new valuation report was presented to the Civil Court of Appeal.

On 7 July 2006 a law was adopted introducing a number of amendments to the Code of Civil Procedure (*ՀՀ քաղաքացիական դատավարության օրենսգիրք* – "the CCP").

By a letter of 7 July 2006 the Local Council informed the Court of Appeal that the first applicant had been summoned to appear at the hearing of 10 July 2006 but not the second applicant, due to her absence.

On 10 July 2006 the first applicant's lawyers filed a motion with the Civil Court of Appeal, requesting the court to order an expert opinion to determine, *inter alia*, the real market value of the property in question, taking into account the growth in prices between 2001 and 2006. It appears that this motion was dismissed.

On 14 July 2006 the Civil Court of Appeal granted the Agency's claim on appeal, ordering the applicants to sign an agreement for a total amount of compensation of AMD 60,292,000 and their eviction together with their family members. Only the first applicant was present at this hearing. The

judgment stated that the second applicant had been duly notified of the time and place of the hearing but had failed to appear. It further stated that it was to enter into force in 15 days and could be contested before the Court of Cassation.

On 28 July 2006 the applicants lodged two separate appeals on points of law with the Court of Cassation (*ՀՀ վճռաբեկ դատարան*). The second applicant complained, *inter alia*, that she had not been engaged in the proceedings before the District Court. She further alleged that the Court of Appeal had failed to respond to her inquiry of 3 July 2006 and to summon her to its hearing of 14 July 2006.

On 5 August 2006 the amendments of 7 July 2006 entered into force.

On 11 August 2006 the then Civil Chamber of the Court of Cassation (*ՀՀ վճռաբեկ դատարանի քաղաքացիական պալատ*), sitting *in camera* as a panel composed of judges D.A., S.A., H.G. and S.O., decided to return the applicants' appeals on the ground that they did not comply with the requirements of Article 230 §§ 1 (4.1) and 3 of the CCP. In particular, the appeals did not indicate any of the grounds required by Article 231.2 § 1. Furthermore, no evidence was attached to the appeals indicating that a copy of the appeals had been sent to the parties and the court which had examined the case. In applying the new rules of civil procedure, which had entered into force on 5 August 2006, the Court of Cassation relied on Article 92 of the Constitution as amended on 27 November 2005 and Article 1 § 3 of the CCP. The Court of Cassation fixed a one month time-limit from the date of receipt of its decisions by the applicants for them to correct the shortcomings in their appeals. Judges D.A., H.G. and S.O. were judges appointed to the then Criminal Chamber of the Court of Cassation (*ՀՀ վճռաբեկ դատարանի քրեական պալատ*) by the President's Decree of 26 February 2005.

On 11 September 2006 the first applicant submitted a new appeal on points of law which contained arguments related to grounds (1) to (3) of the above Article 231.2 § 1. In particular, he argued that the violations of the substantive and the procedural laws would cause grave consequences, namely the unlawful deprivation of his property. Furthermore, the judicial act to be adopted by the Court of Cassation would have a significant impact on the uniform application of the law, taking into account the Constitutional Court's decision of 18 April 2006. Finally, the contested judgment contradicted another decision previously adopted by the Court of Cassation. He also argued that his initial appeal should have been admitted without applying the requirements of Article 231.2 § 1 since it was not yet effective at the time when the appeal was lodged.

On 28 September 2006 the Court of Cassation, sitting *in camera* as a panel of six judges, decided to return the appeal. The reasons provided were as follows:

"The Court of Cassation finds that the arguments raised in the appeal on points of law[, as required by] Article 231.2 § 1 of [the CCP], are not sufficient to admit the appeal."

On 22 November 2006 the second applicant submitted a new appeal on points of law which also contained arguments related to grounds (1) to (3) of Article 231.2 § 1 similar to those raised by the first applicant. She also raised a similar argument in connection with her initial appeal.

On 15 December 2006 the Court of Cassation, sitting *in camera* as a panel of seven judges, decided to return the appeal. The reasons provided were as follows:

"The Court of Cassation finds that the admissibility grounds raised in the appeal on points of law[, as required by] Article 231.2 § 1 of [the CCP], are absent. In particular, the judicial act to be adopted by the Court of Cassation in this case cannot have a significant impact on the uniform application of the law. Furthermore, the Court of Cassation considers the arguments raised in the appeal on points of law concerning a possible judicial error and its consequences, in the circumstances of the case, to be unfounded."

B. Relevant domestic law

1. *The Constitution of 1995 (following the amendments introduced on 27 November 2005 with effect from 6 December 2005)*

The relevant provisions of the Constitution read as follows:

Article 18

"Everyone has the right to an effective remedy to have his rights and freedoms protected by the judicial and other public authorities.

Everyone has the right to defend his rights and freedoms by any means not prohibited by law. ..."

Article 19

"Everyone has the right to a public hearing of his case by an independent and impartial court within a reasonable time in conditions of equality and with respect for all fair trial requirements in order to have his violated rights restored, as well as the validity of the charge against him determined. ..."

Article 31

"Every one shall have the right to dispose of, use, manage and bequeath his property in the way he sees fit. ...

No one can be deprived of his property save 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, in a procedure prescribed by law and with prior equivalent compensation. ..."

Article 92

"...The highest judicial instance in Armenia, except matters falling within constitutional jurisdiction, is the Court of Cassation which is called upon to ensure the uniform application of the law. ..."

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

The relevant provisions of the CCP, prior to the amendments introduced by the Law of 7 July 2006 with effect from 5 August 2006, read as follows:

Article 1: Civil procedure legislation

"3. The proceedings on civil cases are conducted in accordance with the laws in force at the time of examination of the case."

Article 219: Entry into force of judgments of the Court of Appeal

"Judgments of the Court of Appeal enter into force fifteen days after their delivery."

Article 222: Review of judicial acts through cassation proceedings

"1. Judgments ... of the Court of Appeal and the Commercial Court which have not entered into force can be reviewed through cassation proceedings based on the appeals brought by persons indicated in Article 223 of this Code."

Article 223: Persons entitled to bring appeals on points of law

"1. Appeals on points of law against judgments of the Court of Appeal and the Commercial Court which have not entered into force can be brought by the parties and persons who were not parties to the proceedings but whose rights and obligations were affected by the judgment."

Article 224: The court that examines appeals on points of law

"Appeals on points of law lodged against ... judgments of the Court of Appeal and the Commercial Court which have not entered into force ... are examined by the Civil and Commercial Chamber of the Court of Cassation (hereafter, Court of Cassation)."

Article 225: **Grounds for lodging an appeal on points of law**

"An appeal on points of law can be lodged on the ground of ... a substantive or a procedural violation of the parties' rights..."

Article 230: The c**ontent of an appeal on points of law**

"1. An appeal on points of law must contain (1) the name of the court to which the appeal is addressed; (2) the appellant's name; (3) the name of the court that has adopted the judgment, the case number, the date on which the judgment was adopted, the names of the parties, and the subject-matter of the dispute; (4) the appellant's claim, with reference to the laws and other legal acts and specifying which provisions of substantive or procedural law have been violated or wrongly applied ...; [and] (5) a list of documents enclosed with the appeal.

2. An appeal on points of law shall be signed by the appellant.

3. A document certifying payment of the State fee shall be attached to the appeal."

The relevant provisions of the CCP, as amended by the Law of 7 July 2006 with effect from 5 August 2006, read as follows:

Article 219: Entry into force of judgments of the Court of Appeal

"Judgments of the Court of Appeal enter into force from the moment of their delivery."

Article 222: Review of judicial acts through cassation proceedings

"1. Judgments of the first instance courts, the Commercial Court and the Court of Appeal which have entered into force ... can be reviewed through cassation proceedings based on the appeals brought by persons indicated in Article 223 of this law."

Article 223: Persons entitled to bring appeals on points of law

"2. Appeals on points of law against judgments of lower courts which have entered into force can be brought by (1) the parties to the proceedings; [and] (2) persons who were not parties to the proceedings but whose rights and obligations were affected by the judicial act deciding on the merits of the case."

Article 224: The court that examines appeals on points of law and the objective of its activity

"1. Appeals on points of law lodged against judgments of the first instance courts, the Commercial Court and the Court of Appeal which have entered into force ... are examined by the Civil Chamber of the Court of Cassation (hereafter, Court of Cassation).

2. The objective of the Court of Cassation's activity is to ensure a uniform application of the law and its correct interpretation, and to promote the development of the law."

Article 225: **Grounds for lodging an appeal on points of law**

"An appeal on points of law can be lodged on the ground of ... a substantive or a procedural violation of the parties' rights..."

Article 228.1: **Time-limits for lodging an appeal on points of law**

"1. An appeal on points of law can be lodged within six months from the date of entry into force of the judicial act of a lower court deciding on the merits of the case."

Article 230: The c**ontent of an appeal on points of law**

"1. An appeal on points of law must contain (1) the name of the court to which the appeal is addressed; (2) the appellant's name; (3) the name of the court that has adopted the judgment, the case number, the date on which the judgment was adopted, the names of the parties, and the subject-matter of the dispute; (4) the appellant's claim, with reference to the laws and other legal acts and specifying which provisions of substantive or procedural law have been violated or wrongly applied ...; (4.1) arguments required by any of the subparagraphs of paragraph 1 of Article 231.2 of this Code; [and] (5) a list of documents enclosed with the appeal.

2. An appeal on points of law shall be signed by the appellant.

3. A document certifying payment of the State fee shall be attached to the appeal."

Article 231.1: **Returning an appeal on points of law**

"1. An appeal on points of law shall be returned if it does not comply with the requirements of Article 230 and paragraph 1 of Article 231.2 of this Code or if it has been lodged by a person whose rights have not been violated.

2. The Court of Cassation shall adopt a decision to return an appeal on points of law within ten days after the receipt of the appeal.

3. In its decision to return an appeal on points of law the Court of Cassation may fix a time-limit for correcting the shortcoming and lodging the appeal anew."

Article 231.2: Admit**ting an appeal on points of law**

"1. The Court of Cassation shall admit an appeal on points of law, if (1) the judicial act to be adopted on the given case by the Court of Cassation may have a significant impact on the uniform application of the law, or (2) the contested judicial act contradicts a judicial act previously adopted by the Court of Cassation, or (3) a violation of the procedural or the substantive law by the lower court may cause grave consequences, or (4) there are newly discovered circumstances.

2. The Court of Cassation sitting as a panel composed of the President of the Court of Cassation and the judges of the chamber shall decide whether appeals on points of law lodged with the Court of Cassation comply with the requirements of Article 230 of this Code and paragraph 1 of this article and should be admitted.

3. An appeal on points of law shall be admitted if at least three of the judges of the Court of Cassation vote in favour of admitting it. This decision of the Court of Cassation is not subject to appeal."

The relevant provisions of the CCP, as amended by the Law of 28 November 2007 with effect from 1 January 2008 following the Constitutional Court's decision of 9 April 2007 (see below), read as follows:

Article 233: Returning an appeal on points of law

"... 2. The Civil and Administrative Chamber of the Court of Cassation shall adopt a decision to return an appeal on points of law within ten days after the receipt of the case file by the Court of Cassation. The decision to return an appeal on points of law must be reasoned, save the cases in which an appeal on points of law is returned for the lack of the ground stipulated by Article 234 § 1 (1). ..."

Article 234: Admit**ting an appeal on points of law**

"1. The Court of Cassation shall admit an appeal on points of law, if, in its opinion, the appeal substantiates that (1) the decision of the Court of Cassation concerning the question raised in the appeal may have a significant impact on the uniform application of the law, or (2) the contested judicial act *prima facie* contradicts a decision previously adopted by the Court of Cassation, or (3) a *prima facie* judicial error made by the lower court which may cause or have caused grave consequences. ..."

*3. The decision of the Constitutional Court of 9 April 2007 on the Conformity of Article 230 § 1, Article 231.1 and Article 231.2 of the Code of Civil Procedure with the Constitution, adopted on the basis of applications lodged by a number of individuals and legal persons (*ՀՀ սահմանադրական դատարանի 2007 թ. ապրիլի 9-ի որոշումը ՀՀ քաղաքացիական դատավարության օրենսգրքի 230 հոդվածի 1-ին կետի, 231.1., 231.2. հոդվածների դրույքների՝ ՀՀ սահմանադրությանը համապատասխանության հարցը որոշելու վերաբերյալ գործով*)*

The Constitutional Court found paragraph 2 of Article 231.1 in its part concerning the lack of a requirement to provide reasons for a decision to return an appeal on points of law incompatible with, *inter alia*, Articles 18 and 19 of the Constitution, as amended on 27 November 2005, because it failed to ensure legal safeguards for an effective and accessible administration of justice. The remaining contested provisions were found to be compatible with the Constitution.

4. The Judiciary Act (in force from 12 January 1999 to 18 May 2007)

The relevant provisions of this Act, as in force at the material time, read as follows:

Section 21: The concept, composition and deployment of the Court of Cassation

"4. The Court of Cassation is composed of (1) the President of the Court of Cassation; (2) the Civil Chamber; [and] (3) the Criminal Chamber. Each chamber of the Court of Cassation is composed of the President of the chamber and five chamber judges. The compositions of the chambers of the Court of Cassation adopt decisions on behalf of the Court of Cassation."

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

The relevant provisions of the Law on Legal Acts read as follows:

Article 8: The Constitution of the Republic of Armenia

"2. The Constitution of [Armenia] has a supreme legal force and its provisions are directly applicable. The laws and other legal acts are adopted on the basis of the Constitution or for the purpose of its implementation and must not contradict it. ..."

Article 14: Decrees of the Government of the Republic of Armenia

"2. The decrees of the Government of the Republic of Armenia must not contradict[, *inter alia*,] the Constitution of the Republic of Armenia, the laws of the Republic of Armenia [and] the decisions of the Constitutional Court of the Republic of Armenia..."

6. *Decree no. NH-37-A of the President of Armenia of 26 February 2005 Approving the List of Professional Aptitude of Judges for 2005* (ՀՀ նախագահի 2005 թ. փետրվարի 26-ի ՆՀ-37-Ա հրամանագիրը դատավորների պաշտոնեական պիտանիության 2005 թվականի ցուցակը հաստատելու մասին)

The List of Professional Aptitude of Judges for 2005, featuring in annex to this Decree, included judges D.A., H.G. and S.O. who were listed as judges of the then Criminal and Military Chamber of the Court of Cassation (later transformed into the Criminal Chamber of the Court of Cassation).

7. *The Decision of the Constitutional Court of 27 February 1998 on the Conformity of Article 22 of the Law on Real Estate 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)

In interpreting Article 28 of the Constitution, prior to the amendments introduced on 27 November 2005, the Constitutional Court noted that a person's property could be expropriated and – in the absence of his consent – a person could be deprived of his property on the grounds envisaged by Article 28 of the Constitution only through the adoption of a law on the immovable property in question, 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 should also oblige the Government to fix the amount of compensation on the basis of a financial-economic assessment, taking into account market prices, the results of the negotiation between the Government and the owner of the property subject to expropriation and upon his written consent. The Constitutional Court further noted that the Government was not entitled to establish a procedure for the expropriation of property for the needs of society and the State that would grant them the right to expropriate such immovable property.

8. *Government Decree no. 950 of 5 October 2001 Approving the Procedure for the Taking of Plots of Land and Real Estate Situated within the Alienation Zones of Yerevan, their Compensation, Elaboration of Price Offers and their Realisation* (ՀՀ կառավարության 2001 թ. հոկտեմբերի 5-ի թիվ 950 որոշումը Երևան քաղաքի օտարման գոտիներում գտնվող հողամասերն ու անհշարժ գույքը վերցնելու, փոխհատուցելու, գնայնի առաջարկը ձևավորելու և իրացնելու կարգը հաստատելու մասին)

Paragraph 7 provides that the market value of the real estate, which is determined by a licensed valuation organisation selected through a tender, shall serve as a basis for the determination of the amount of compensation for the real estate (land plots, buildings and constructions) situated within the alienation zone.

9. *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 որոշում Երևանի Կենտրոն թաղային համայնքի վարչական սահմանում կառուցապատման ծրագրերի իրականացման միջոցառումների մասին)

For the purpose of implementation of construction projects in Yerevan, the Government decided to approve the expropriation zones of the real estate (plots of land, buildings and constructions) situated within the administrative boundaries of the Kentron District of Yerevan to be taken for the needs of the State, with a total area of 345,000 sq. m.

10. *The Decision of the Constitutional Court of 18 April 2006 on the Conformity of Article 218 of the Civil Code, Articles 104, 106 and 108 of the Land Code and the Government Decree no. 1151-N adopted on 1 August 2002 Concerning the Implementation of Construction Projects within the Administrative Boundaries of the Kentron District of Yerevan with Article 31 of the Constitution (*ՀՀ սահմանադրական դատարանի 2006 թ. ապրիլի 18-ի որոշումը «Երևանի Կենտրոն թաղային համայնքի վարչական սահմանում կառուցապատման ծրագրերի իրականացման միջոցառումների մասին» թիվ 1151-Ն որոշման՝ ՀՀ սահմանադրության 31 հոդվածին համապատասխանության հարցը որոշելու վերաբերյալ գործով*)

The Constitutional Court, deciding on the application of the Armenian Ombudsmen, found that Article 31 of the Constitution, as amended on 27 November 2005, required that the expropriation process be regulated by a law. Such law should establish in clear terms the legal framework for expropriation of property for the needs of society and the State. The contested legal provisions, including the Government Decree no. 1151-N, failed to meet this requirement and were therefore incompatible with, *inter alia*, Article 31 of the Constitution.

COMPLAINTS

1. The applicants complain under Article 6 of the Convention that

(a) the courts were not independent and impartial; in particular, in all other similar cases the courts had always granted the claims of the authorities;

(b) the Court of Appeal failed to apply and interpret the law correctly, to examine and evaluate their arguments, to assess the evidence and determine the amount of compensation properly, and to adopt a reasoned judgment;

(c) they were denied access to the Court of Cassation because this court, by returning their appeals of 28 July 2006, relied on rules of civil procedure which were not yet in force, and then later decided to return their re-submitted appeals;

(d) the composition of the Court of Cassation which decided to return their appeals of 28 July 2006 was not a tribunal established by law because three of the four judges who took this decision were judges of the Criminal Chamber as opposed to the Civil Chamber.

2. The first applicant complains under Article 6 and 13 of the Convention that

(a) the principle of equality of arms was not respected since his motion of 10 July 2006 requesting the Court of Appeal to order an expert opinion to determine the price of his property was dismissed;

(b) the courts dismissed a number of his motions, including those seeking to have the proceedings stayed and to have constitutional proceedings instituted.

3. The second applicant complains under Articles 6 and 13 of the Convention that the proceedings were instituted and the District Court adopted a judgment only in respect of the first applicant. She was engaged in the proceedings only on appeal and was thereby deprived of various rights enjoyed by a defendant under the CCP. The Court of Appeal did not summon her to its hearings, except for the one held on 10 July 2006.

4. The applicants complain under Article 1 of Protocol No. 1 that the deprivation of their property was unlawful and did not pursue any public

interest, while the amount of compensation awarded was inadequate. Furthermore, they were deprived of the financial incentive because the judgment of the Court of Appeal was adopted less than ten days after they had received the Agency's proposal of 6 July 2006.

THE LAW

1. The applicants jointly raise a number of complaints under Article 6 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 ..."

As regards the complaints raised in sub-paragraphs (a) and (b) of paragraph 1 above, the Court, having regard to all the material in its possession, considers that these complaints do not disclose any appearance of a violation of the fair trial guarantees of Article 6 of the Convention.

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.

As regards the complaints raised in sub-paragraphs (c) and (d) of paragraph 1 above, the Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The first applicant raises a number of complaints under Article 6 of the Convention, cited above.

As regards the complaint raised in sub-paragraph (a) of paragraph 2 above, the Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

As regards the remainder of the complaints, the Court, having regard to all the material in its possession, considers that these complaints do not disclose any appearance of a violation of the fair trial guarantees of Article 6 of the Convention.

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.

3. The second applicant raises a number of complaints under Articles 6 and 13 of the Convention. The Court considers that these complaints fall to be examined under Article 6 of the Convention, cited above.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in

accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

4. The applicants complain about the deprivation of their property and invoke Article 1 of Protocol No. 1 which provides:

> "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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints concerning the lack of access to the Court of Cassation, the lawfulness of the Court of Cassation's composition when it decided to return their appeals of 28 July 2006 and the deprivation of their property, the first applicant's complaint concerning the lack of equality of arms and the second applicant's complaint concerning the lack of a fair hearing;

Declares the remainder of the application inadmissible.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President