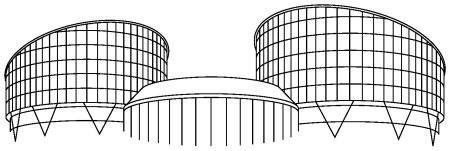

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SIMONYAN v. ARMENIA

(Application no. 18275/08)

JUDGMENT

STRASBOURG

7 April 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Simonyan v. Armenia,

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

Mirjana Lazarova Trajkovska, *President,*
Ledi Bianku,
Kristina Pardalos,
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Armen Harutyunyan,
Pauliine Koskelo, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 18275/08) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Rubik Simonyan ("the applicant"), on 10 April 2008.

2. The applicant was represented by Mr H. Alumyan, 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. The applicant alleged, in particular, that the decision of the Court of Cassation of 10 October 2007 to quash the judgment of the Civil Court of Appeal of 19 January 2007 had infringed the principle of *res judicata* and his right to the peaceful enjoyment of possessions.

4. On 20 October 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Yerevan. He owned a house measuring 223.9 sq. m. and a plot of land measuring 770.3 sq. m. jointly with his mother.

6. On an unspecified date the applicant lodged a civil claim against several individuals, who were apparently his relatives residing in the house (hereafter, the respondents), seeking to terminate their right of use of accommodation in respect of a part of the house by paying compensation and to evict them. The applicant's mother also lodged a similar claim.

7. On 24 August 2006 the respondents lodged a counter-claim seeking to invalidate the ownership certificate and to have their ownership recognised in respect of the part of the house and of the plot of land used by them by virtue of acquisitive prescription.

8. On 14 September 2006 the Shengavit District Court of Yerevan dismissed the applicant's and his mother's claims and granted the respondents' counter-claim.

9. On an unspecified date the applicant lodged an appeal against the judgment of the District Court.

10. On 19 January 2007 the Civil Court of Appeal examined the appeal and granted the applicant's claim in its part concerning the termination of the respondents' right of use of accommodation through payment of compensation. At the same time it dismissed the respondents' counter-claim.

11. This judgment became immediately effective and was subject to appeal on points of law within six months from the date of its delivery.

12. On 24 April 2007 the respondents lodged an appeal on points of law with the Court of Cassation against this judgment, claiming that it had been adopted in violation of substantive law. As a ground for admitting their appeal, the respondents submitted, pursuant to Article 231.2 § 1 (1) and (3) of the Code of Civil Procedure (the CCP), that the judicial act to be adopted by the Court of Cassation might have a significant impact on the uniform application of the law and that the violation of the substantive law might cause grave consequences.

13. On 2 May 2007 the Court of Cassation decided to return the respondents' appeal as inadmissible for lack of merit. The reasons provided were as follows:

> "The Civil Chamber of the Court of Cassation ... having examined the question of admitting [the respondents' appeal lodged against the judgment of the Civil Court of Appeal of 19 January 2007], found that it must be returned for the following reasons:
>
> Pursuant to Article 230 § 1 (4.1) of [the CCP] an appeal on points of law must contain a ground [required by] Article 231.2 § 1 of [the CCP].
>
> 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 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."

14. This decision became final from the moment of its pronouncement and was not subject to appeal.

15. On 19 July 2007 the respondents lodged another appeal on points of law with the Court of Cassation against the judgment of the Court of Appeal of 19 January 2007, alleging violations of substantive and procedural law. As a ground for admitting their appeal the respondents indicated, besides the grounds mentioned in their first appeal on points of law, that the contested judicial act contradicted a judicial act previously adopted by the Court of Cassation.

16. On 2 August 2007 the Court of Cassation decided to admit the appeal for examination, finding that it complied with the requirements of Articles 230 and 231.2 § 1 of the CCP.

17. On 10 October 2007 the Court of Cassation examined the appeal on the merits and decided to grant it by quashing the judgment of the Civil Court of Appeal of 19 January 2007 and validating the judgment of the Shengavit District Court of 14 September 2006.

18. On 15 November 2007 an ownership certificate was issued in the name of the respondents in respect of 115.4 sq. m. of the house and 387 sq. m. of the plot of land.

II. RELEVANT DOMESTIC LAW

19. For a summary of the relevant domestic provisions see *Amirkhanyan v. Armenia*, no. 22343/08, §§ 25-28, 3 December 2015.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

20. The applicant complained that the decision to quash the judgment of 19 January 2007 had been taken in violation of the principle of *res judicata* and had infringed his right to the peaceful enjoyment of his possessions. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

Article 6 § 1 of the Convention

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 1 of Protocol No. 1

"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

21. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

22. The Government submitted that there had been no violation of the principle of finality of judgments or the applicant's right to the peaceful enjoyment of his possessions because the law at the material time allowed for lodging more than one appeal on points of law within the prescribed time-limit. Hence, there was nothing irregular in the decision of the Court of Cassation to admit the second appeal and quash the Court of Appeal's judgment of 19 January 2007.

23. The applicant submitted that the law at the material time, namely Article 231.1 § 4 of the CCP, explicitly prohibited appeals on points of law to be lodged more than once in the same case if no time-limit had been fixed by the Court of Cassation to correct any shortcomings in the appeal. Thus, by admitting the second appeal lodged by the respondents and subsequently quashing the final judgment of 19 January 2007, the Court of Cassation had violated the guarantees of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

24. The Court reiterates that the principle of legal certainty guaranteed by Article 6 § 1 of the Convention requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, and *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX). It further reiterates that a final court judgment which recognises one's title to property may be regarded as a "possession" for the purpose of Article 1 of Protocol No. 1 and quashing such a judgment after it has become final and no longer subject to appeal will constitute an interference with the judgment beneficiary's right to the peaceful enjoyment of that possession (see *Brumărescu*, cited above, § 74, and *Ryabykh*, cited above, § 61).

25. Turning to the circumstances of the present case, the Court notes that it has already examined similar complaints and arguments of the parties in another case against Armenia and found a violation of the guarantees of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Amirkhanyan*, cited above, §§ 34-40 and §§ 46-48). The final judgment of 19 January 2007 was quashed by the Court of Cassation in similar circumstances which violated the principle of legal certainty. Furthermore, that judgment confirmed the applicant's ownership right in respect of the house and the plot of land, which was reversed by the quashing. There has therefore been an interference with the applicant's peaceful enjoyment of possessions which was not lawful.

26. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 30,510 euros (EUR) in respect of pecuniary damage, this being the market value of the part of the house and the plot of land of which he had been deprived as a result of the quashing of the final judgment. He submitted a valuation produced by a real estate company in support of his claim. The applicant further claimed EUR 3,000 in respect of non-pecuniary damage.

29. The Government submitted that the applicant had owned the property in question jointly with his mother. He could therefore claim pecuniary damage only in respect of the half of the property. His claim for non-pecuniary damage was to be dismissed because there was no causal link between the violation alleged and such damage.

30. The Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in that the final judgment in the applicant's favour had been quashed in violation of the principle of legal certainty and that as a result of the quashing the applicant had been deprived of a part of his property. Normally, the priority under Article 41 of the Convention is *restitutio in integrum*, as the respondent State is expected to make all feasible reparation for the consequences of the violation in such a manner as to restore as far as possible the situation existing before the breach (see, among other authorities, *Piersack*

v. Belgium (Article 50), judgment of 26 October 1984, Series A no. 85, § 12). In case of a quashing of a final judgment recognising the applicant's title to a property, the return of the property in question would put the applicant as far as possible in the situation equivalent to the one in which he would have been if there had not been a breach of Article 1 of Protocol No. 1. However, as an alternative, payment of the current value of the property as compensation for pecuniary damage is also possible (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, §§ 22-23, ECHR 2001-I).

31. In the present case, the Court notes that the restitution of the property in question may affect competing third-party interests (see, by contrast, *Gladysheva v. Russia*, no. 7097/10, § 106, 6 December 2011). Moreover, the applicant himself did not claim such restitution (see, by contrast, *Brumărescu* [GC], cited above, § 10) but rather payment of the market value of the property, to which the Government did not object, and which, according to him, amounted to EUR 30,510. The Court therefore considers it possible to award the applicant in the present case compensation for the pecuniary damage sustained. However, as rightly pointed out by the Government, the applicant owned only half of the property in question, while the second half belonged to his mother who was not an applicant in the present case. Only half of the amount claimed for pecuniary damage must therefore be granted. The Government did not contest the valuation submitted by the applicant and the Court has no reasons to doubt its accuracy. It therefore decides to award the applicant EUR 15,255 in respect of pecuniary damage. The Court further decides to award the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant did not claim any costs and expenses.

C. Default interest

33. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 15,255 (fifteen thousand two hundred and fifty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

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

Done in English, and notified in writing on 7 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President