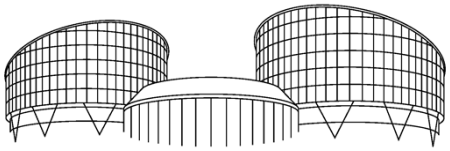

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF HAKOBYAN AND AMIRKHANYAN v. ARMENIA

(Application no. 14156/07)

JUDGMENT

STRASBOURG

17 October 2019

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

In the case of Hakobyan and Amirkhanyan v. Armenia,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Aleš Pejchal,
Pere Pastor Vilanova,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski, *judges,*

and Abel Campos, Section Registrar,

Having deliberated in private on 17 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 14156/07) 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 Armenian nationals, Mr Versandik Hakobyan and Ms Heghine Amirkhanyan ("the applicants"), on 27 March 2007.

2. The applicants were represented by Mr A. Zohrabyan, Ms M. Ghulyan and Mr K. Mezhlumyan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights.

3. On 3 March 2009 the Court decided to communicate to the Government the part of the application regarding the applicants' complaints concerning the deprivation of their property and the alleged unfairness of the ensuing civil proceedings under Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention. The remainder of the application was declared inadmissible.

4. Mr Armen Harutyunyan, the judge elected in respect of Armenia, was unable to sit in the case (Rule 28 of the Rules of Court). Accordingly, the President of the Chamber decided to appoint Pauliine Koskelo to sit as an *ad hoc* judge (Rule 29 § 2 (b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants Hakobyan and Amirkhanyan (hereafter, the first and the second applicants), who were born in 1950 and 1958 respectively and live in Yerevan, are husband and wife. They jointly owned a plot of land measuring 222 sq. m. and a house measuring 124.52 sq. m. situated in the centre of Yerevan. 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). On the ownership certificate issued in respect of this property on 7 November 2001 the first applicant was indicated as its sole owner.

6. On 25 November 2000 the Government adopted Decree no. 774 by which it approved a project presented by the Yerevan Mayor's Office to construct an avenue, the Northern Avenue, 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.

7. 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, covering a total area of 82,700 sq. m.

8. 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, covering a total area of 345,000 sq. m.

9. A special body, the "Yerevan Construction and Investment Project Implementation Agency" ("the Agency"), was set up to manage the implementation of the project.

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

11. On 16 September 2005 A.E. 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 covering letter of the manager of A.E. Ltd, this report could serve as a basis for a preliminary offer but not for the final agreement and compensation.

12. 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.

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

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

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

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

17. On 6 December 2005 the Kentron and Nork-Marash District Court of Yerevan 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 his eviction together with his family members.

18. On 21 December 2005 the first applicant lodged an appeal.

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

20. 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 had 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.

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

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

23. On 21 June 2006 the first applicant's lawyers filed written submissions with the Civil Court of Appeal arguing, *inter alia*, that the market value of the property in question, as established by the valuation reports of A.E. Ltd, was seriously underestimated, given the increase 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.

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

25. It appears that, at some point during the proceedings before the Court of Appeal, the second applicant was engaged as a party, 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.

26. On 4 July 2006 A.E. 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).

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

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

29. On 7 July 2006 a law was adopted introducing a number of amendments to the Code of Civil Procedure ("the CCP").

30. 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.

31. On 10 July 2006 the first applicant's lawyers filed an application 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 increase in prices between 2001 and 2006. It appears that this application was dismissed.

32. 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 AMD 60,292,000 in compensation 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. The judgment was to enter into force in 15 days and could be contested before the Court of Cassation.

33. On 28 July 2006 the applicants lodged two separate appeals on points of law with the Court of Cassation. 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.

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

35. On 11 August 2006 the then Civil Chamber of the Court of Cassation decided not to admit 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, there was no evidence that

copies of the appeals had been sent to the other parties and to the lower court which had examined the case. 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.

36. On 11 September 2006 the first applicant submitted a new appeal on points of law. 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.

37. On 28 September 2006 the Court of Cassation, sitting in camera as a panel of six judges, decided to declare the appeal inadmissible. 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."

38. On 30 October 2006 the Civil Court of Appeal issued a writ of execution in respect of its judgment of 14 July 2006.

39. On 22 November 2006 the second applicant submitted a new appeal on points of law which also contained arguments similar to those raised by the first applicant. She also raised a similar argument in connection with her initial appeal.

40. According to the information provided by the Government, on 1 December 2006 the applicants' property was handed over to the Agency.

41. On 15 December 2006 the Court of Cassation, sitting in camera as a panel of seven judges, decided to declare the appeal inadmissible. 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."

II. RELEVANT DOMESTIC LAW

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

42. Article 31 of the Constitution read as follows:

"Everyone 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. ..."

B. 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)*

43. 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.

C. 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, գնային առաջարկը ձևավորելու և իրացնելու կարգը հաստատելու մասին)*

44. 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.

D. 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 սահմաններում կառուցապատման ծրագրերի իրականացման միջոցառումների մասին)*

45. For the purpose of the 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.

E. 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*)

46. 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 Government Decree no. 1151-N, failed to meet this requirement and were therefore incompatible with, *inter alia*, Article 31 of the Constitution.

THE LAW

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

47. The applicants complain 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. They rely on 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. The Government's request to strike out the application under Article 37 § 1 of the Convention

48. The Government submitted a unilateral declaration requesting the Court to strike the application out of its list of cases pursuant to Article 37 § 1 of the Convention.

In the light of the criteria established in its jurisprudence, the Court considers that the unilateral declaration submitted by the Government does not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 in fine). Hence, the Court rejects the Government's request to strike the application out and will accordingly pursue its examination of the merits of the case (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, § 75, ECHR 2003-VI).

B. Admissibility

49. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

50. The applicants submitted that the deprivation of their property had not been carried out under the conditions provided for by law since it had been effected in violation of the guarantees of Article 31 of the Constitution. They also argued that the expropriation of their property had not been based on any prevailing public interest. The applicants further submitted that the market value of their property had been grossly underestimated in the domestic proceedings. They lastly argued that no compensation had been paid to them for their expropriated property. The first applicant had neither signed an agreement on the taking of his property nor had he ever attempted to claim the amount of AMD 54,838,000 allegedly transferred to the deposit account of the public notary following the Kentron and Nork-Marash District Court's judgment of 6 December 2005.

51. The Government refrained from making any submissions concerning this complaint.

52. The Court notes that it has already examined complaints concerning the application of the same provisions of domestic law in a number of cases against Armenia and concluded that the deprivation of property at the material time was not carried out in compliance with "conditions provided for by law" (see, among other cases, *Minasyan and Semerjyan v. Armenia*, no. 27651/05, §§ 69-77, 23 June 2009; *Tunyan and Others v. Armenia*,

no. 22812/05, §§ 35-39, 9 October 2012). The Court does not see any reason to depart from that finding in the present case.

53. In view of this finding, it is unnecessary to examine whether the interference in question pursued a legitimate aim and was proportionate to that aim (see, for example, *Vijatović v. Croatia*, no. 50200/13, § 58, 16 February 2016; *Gubiyev v. Russia*, no. 29309/03, § 83, 19 July 2011).

54. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. Relying on Article 6 of the Convention, the applicants complained of the lack of access to the Court of Cassation and the lawfulness of the Court of Cassation's composition when it decided to return their appeals of 28 July 2006. Again relying on the same provision, the first applicant complained that the principle of equality of arms had not been respected, while the second applicant raised a number of other complaints concerning the lack of a fair hearing.

56. Having regard to the facts of the case and its finding of a violation of Article 1 of Protocol No. 1 concerning the deprivation of the applicants' property, the Court considers that it has examined the main legal question raised in the present application. It concludes, therefore, that there is no need to give a separate ruling on the applicants' complaints under Article 6 of the Convention (see *Ghasabyan and Others v. Armenia*, no. 23566/05, § 29, 13 November 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

1. Pecuniary damage

58. The applicants claimed 480,000,000 (AMD) (879,000 euros (EUR)) in respect of pecuniary damage. This amount included the applicants' claim of AMD 280,000,000 (EUR 512,000) as compensation for their expropriated property and AMD 200,000,000 (EUR 366,000) for the loss of income.

In support of the first part of their claim, the applicants submitted two valuation reports dated 23 December 2015 and 6 May 2016, assessing the market value of their plot of land at respectively AMD 279,100,000 (EUR 532,830) and AMD 280,450 (EUR 513,310) on the respective dates when the relevant reports were drafted. Both reports estimated the market value of the applicants' plot of land at the time of the expropriation (1 September 2005) to have been AMD 196,300,000 (EUR 345,270 at the relevant time).

As regards the second part of their claim, the applicants provided a lease agreement dated 3 October 2002 whereby the first applicant had leased the property in question to a private company for a monthly rental price of AMD 1,600,000 (EUR 2,785 at the relevant time). The applicants argued that the contract had been concluded for an indefinite period of time. However, they were obliged to terminate it by an agreement of 16 January 2006 since they had been requested by the bailiffs to hand over the property.

The applicants further claimed EUR 10,000 in respect of non-pecuniary damage.

59. The Government argued that the applicants' claims were excessive and not supported by accurate and reliable documentation.

As regards in particular the applicants' claim with regard to compensation of the value of their property, the Government argued that the assessment of the compensation in this respect should be based on the market value of the property in question at the material time.

The Government submitted that the applicants had not received the compensation in the amount of AMD 60,292,000 (approximately EUR 114,650 at the material time) awarded in the domestic proceedings due to their own omission. Therefore, the Government should not bear responsibility for the possible negative effects of inflation with regard to this amount. On 28 November 2006 the amount in question was transferred by the Agency to the relevant bank deposit account of the Department for the Enforcement of Judicial Acts. The Government submitted relevant documentary evidence attesting that the amount in question had been available on the relevant bank account as of May 2016, when the Government had filed its submissions in this respect.

The Government expressed doubts concerning the accuracy of estimations of the market value of the applicants' property reflected in the real estate valuation reports submitted by the applicants. They argued, *inter alia*, that the market price of the property at the material time as indicated in the relevant reports, that is AMD 196,300,000, was inconsistent with the prices of real estate indicated in the very letter of the State Real Estate Agency of 7 February 2006 on which the applicants relied in the domestic proceedings to prove that the value of their property had been underestimated.

As regards the applicants' claim with regard to the loss of income, the Government disputed the validity of the lease contract of 15 October 2002 submitted by the applicants in support of this claim. They argued, in particular, that the contract in question had not been registered with the State Real Estate Registry as required by domestic law. Furthermore, according to the information provided by the tax authorities, neither the first applicant nor the company who had allegedly leased the property had made any tax contributions related to the lease during the period from 2002 until 2006.

Lastly, the Government argued that the applicants' claim in respect of non-pecuniary damage was inconsistent with the Court's previous awards in similar cases against Armenia. Referring to the Court's awards in the cases of *Minasyan and Semerjyan* (*Minasyan and Semerjyan v. Armenia* (just satisfaction), no. 27651/05, § 24, 7 June 2011) and *Baghdasaryan and Zarikyants* (*Baghdasaryan and Zarikyants v. Armenia*, no. 43242/05, § 30, 13 November 2014), the Government considered the applicants' claim under this head to be excessive.

60. The Court has held on a number of occasions that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore, as far as possible, the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32, ECHR 2000-XI). If the nature of the violation allows of *restitutio in integrum* it is the duty of the State held liable to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, however, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see, among other authorities, *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

61. The Court notes that no *restitutio in integrum* as regards the applicants' house is possible, since it has been demolished. The Court notes at the same time that the applicants' claim for pecuniary damages merely concerns the value of the land, which has moreover been the subject of valuation in the two expert reports provided by them in support of their claim.

In so far as the applicants claim compensation for the value of the plot of land of which they have been deprived, the Court notes that, in principle, the return of the land would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of Article 1 of Protocol No. 1. In the instant case, however, given that the applicants have never requested restitution of the land before the national courts and that the possibility of such restitution has not been discussed by the parties in their submissions before the Court, the Court

considers that an award for pecuniary damage is more appropriate in the present case (see, *mutatis mutandis*, *Chengelyan and Others v. Bulgaria* (just satisfaction), no. 47405/07, § 28, 23 November 2017).

62. In assessing the pecuniary damage sustained by the applicants, the Court takes note of the Government's submission that the amount of AMD 60,292,000 awarded to the applicants in domestic proceedings remains deposited in the relevant bank account of the Department for Enforcement of Judicial Acts since 28 November 2006 (see paragraph 59 above). This sum should therefore be deducted from the amount of the final award on the presumption that it is still available to the applicants.

63. Having regard to the principles established in the *Minasyan and Semerjyan v. Armenia* judgment (see *Minasyan and Semerjyan v. Armenia* (just satisfaction), no. 27651/05, §§ 17-21, 7 June 2011), the Court rejects the applicants' claims in so far as they are based on the market value of their plot of land as at December 2015 and May 2016 and considers that the level of compensation should be determined with reference to the date on which the applicants lost ownership of their property – the house and the underlying plot of land, that is December 2006 (see paragraph 40 above).

64. The Court, however, notes that it does not possess a valuation report determining the market value of the property in question as at December 2006.

According to the reports of December 2015 and May 2016 commissioned by the applicants, the value of their land as at September 2005 was the equivalent of EUR 345,270. The Court observes that, according to the contract of 23 October 2001, the applicants had bought the property in question for the equivalent of approximately EUR 167,250 at the material time (see paragraph 5 above). The Court further observes that in the course of the domestic proceedings the applicants produced evidence to substantiate that property prices had more than doubled between 2001 and 2005 (see paragraphs 19 and 20 above).

The Court, however, notes that no evidence was submitted by the applicants in the proceedings before the Court to substantiate that the price paid for the property at the time of purchase corresponded to its average market price at the relevant time. In view of this, and the information available to it on purchase prices on the Armenian property market during the relevant period, the Court is not able to accept the valuations commissioned by the applicants as fully credible and will proceed to determine the level of pecuniary compensation on the basis of the materials at its disposal.

65. Hence, making its own assessment based on all the information available to it, the Court estimates the market value of the property in question at approximately the equivalent of EUR 234,000 at the relevant time. Having regard to the principles established in the *Minasyan and*

Semerjyan v. Armenia judgment (see, *Minasyan and Semerjyan*, cited above, § 20), this amount should be converted to current value to offset the effects of inflation. Furthermore, a reduction in the amount of domestic compensation (see paragraph 62 above) should be made.

66. Having regard to the above factors, the Court estimates the pecuniary damage suffered at EUR 250,000 and decides to award this amount jointly to the applicants.

67. The Court lastly notes that the applicants claimed the loss of income they had allegedly sustained on account of no longer being able to collect rent in respect of the property in question after its expropriation. The Court observes that, according to the lease contract of 15 October 2002 submitted by the applicants in support of their claim, it was subject to mandatory registration with the State Real Estate Registry within thirty days. The contract also stipulated that it would enter into force from the moment of registration of property rights arising out of the lease agreement. As it appears from the material at the Court's disposal, the contract in question was not submitted for state registration with the competent authority, as was required by domestic law and the relevant provisions of the contract itself. In these circumstances, the Court considers that the applicants' claim under this head is not duly substantiated and does not give rise to any separate compensable loss.

2. Non-pecuniary damage

68. The applicants claimed EUR 10,000 in respect of non-pecuniary damage.

69. The Government considered that the applicants' claim under this head was excessive.

70. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court decides to award EUR 3,000 to each of the applicants under this head.

B. Costs and expenses

71. The applicants also claimed AMD 807,600 (EUR 1,480) for the costs and expenses incurred before the domestic courts and AMD 3,336,594 (EUR 6,170) for those incurred before the Court.

72. The Government did not make any submissions in this respect.

73. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 for the costs and expenses incurred in the domestic proceedings and in the proceedings before the Court.

C. Default interest

74. 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

1. *Rejects*, unanimously, the Government's request to strike the application out of the list;

2. *Declares*, unanimously, the application admissible;

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

4. *Holds*, by six votes to one, that there is no need to rule separately on the applicants' communicated complaints under Article 6 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants, 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) unanimously, EUR 250,000 (two hundred and fifty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) by six votes to one, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) unanimously, EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Ksenija Turković
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pastor Vilanova is annexed to this judgment.

K.T.U.
A.C.

PARTLY DISSENTING OPINION OF JUDGE PASTOR VILANOVA

(Translation)

My dissenting opinion concerns only points 4 and 5 (a) (ii) of the operative part of the judgment, in respect of which I cast the sole dissenting vote.

I have already criticised the fact of focusing on "*the main legal question*" (see paragraph 56 of the judgment) in my dissenting opinion in the case of *Popov and Others v. Russia* (no. 44560/11, 27 November 2018), to which I now refer. Other judges of the Court have also spoken out in the past against this judicial approach, which I consider erroneous (see, *inter alia*, the dissenting opinions of judges Bošnjak and Kūris in the case of *Petukhov v. Ukraine* (no. 2) (no. 41216/13, 12 March 2019), judges Nußberger and Ranzoni in *Kuzmenko v. Ukraine* (no. 49526/07, 9 March 2017), judge De Gaetano in *Mariusz Lewandowski v. Poland* (no. 66484/09, 3 July 2012), judge Mularoni in *Kişmir v. Turkey* (no. 27306/95, 31 May 2005), judges Tulkens, Spielmann and Laffranque in *Stanev v. Bulgaria* [GC] (no. 36760/06, ECHR 2012), and judges Rozakis, Bratza, Bonello, Loucaides and Jočienė in *Draon v. France* [GC] (no. 1513/03, 6 October 2005)).

The present judgment examines the applicants' complaint solely under Article 1 of Protocol No. 1, but does not address their complaint under Article 6. This is a cause of concern, especially since the applicants complained of particularly serious violations, including a denial of access to the Court of Cassation, the unlawfulness of that court's composition and, lastly, a breach of the principle of equality of arms (see paragraph 55 of the judgment). The fact of ignoring these grievances seems particularly problematic in that the Court itself had communicated no fewer than four questions on these specific points to the parties in 2009. A decade later, the majority finds these same issues to be secondary and no longer deserving of any examination. In my humble opinion, the Convention does not allow for a subjective sifting of the rights and freedoms recognised therein. The parties to the dispute deserve an objective examination (admittedly, more or less in-depth) of all the complaints raised by them. The legitimacy of a court lies essentially in the confidence that it inspires in the public. To sum up, I consider that the time has come for the Grand Chamber to take a decisive stand on this restrictive approach.