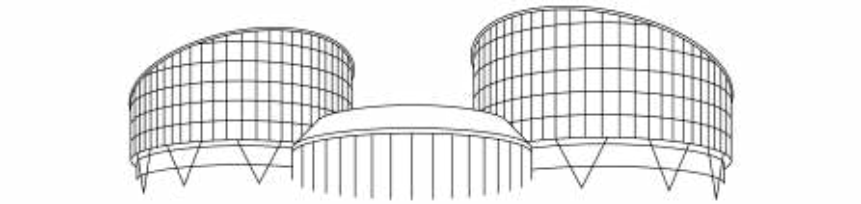

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MINASYAN AND SEMERJYAN v. ARMENIA

(Application no. 27651/05)

JUDGMENT
(*Just satisfaction*)

STRASBOURG

7 June 2011

FINAL

07/09/2011

This judgment has become final under Article 44 § 2 of the Convention. It 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,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi, *judges,*
and Santiago Quesada, *Registrar,*

Having deliberated in private on 17 May 2011,

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. In a judgment delivered on 23 June 2009 ("the principal judgment"), the Court held that deprivation of the applicants' possessions had not been compatible with the principle of lawfulness and that, consequently, there had been a violation of Article 1 of Protocol No. 1 (see paragraphs 69-77 of the principal judgment).

3. Under Article 41 of the Convention the first applicant, as the owner of the flat, sought compensation corresponding to the value of the flat on the date of the Court's judgment, amounting to 133,467 euros (EUR), and the loss of income, amounting to EUR 16,683. The second applicant, who enjoyed a right of use in respect of the flat, sought pecuniary damages of EUR 6,930. They also sought non-pecuniary damages of EUR 25,000 and costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within three months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (see paragraph 91 of the principal judgment and point 4 (a) and (b) of the operative provisions).

5. The applicants and the Government each filed observations.

THE LAW

6. 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

(a) The applicants' submissions

7. The first applicant maintained her claim of EUR 133,467. She argued that the assessment of the compensation was to be based on the value of her flat during the period when the Court found a violation of Article 1 of Protocol No. 1, namely 23 June 2009, and alleged that the market value per square metre in buildings in the area in question during that period fluctuated between 4,000 United States dollars (USD) and USD 7,000 (approximately EUR 2,880 and EUR 5,040 at the material time). In support of this claim the first applicant relied on several documents:

(a) a letter dated 19 November 2007 from a private real estate company, according to which a square metre on the ground floor – the so-called commercial space – in newly constructed buildings in the area in question cost between USD 7,000 and USD 10,000 (approximately EUR 4,770 and EUR 6,820 at the material time) and on the first and higher floors – the so-called office space – between USD 3,000 and USD 5,000 (approximately EUR 2,045 and EUR 3,410 at the material time);

(b) a valuation report by another private real estate company dated 28 August 2008 of a specific flat measuring 185.2 sq. m situated on the ground floor on a nearby street and having a basement measuring 159.8 sq. m, according to which a square metre of the ground floor space as of 28 February 2008 cost 1,830,375 Armenian drams (AMD) (approximately EUR 3,960 at the material time). According to that report a square metre of comparable property on nearby streets, based on newspaper advertisements and the company's own database, cost between AMD 2,000,000 and AMD 2,500,000 (approximately EUR 4,325 and EUR 5,405 at the material time);

(c) a real estate sale/purchase contract concluded on 8 June 2007 between two third parties in respect of a flat measuring 26.8 sq. m and situated on a nearby street, according to which a square metre of the

property in question cost about AMD 1,634,890 (approximately EUR 3,500 at the material time); and

(d) a letter dated 20 April 2010 from another private real estate company, according to which the cost per square metre on the ground floor in newly constructed buildings in the area in question fluctuated between AMD 710,000 and AMD 2,200,000 (approximately EUR 1,340 and EUR 4,145 at the material time).

8. The first applicant argued that, since her flat was situated on the ground floor, it could easily have been transformed into office space and could have been enlarged by means of a basement, which substantially raised its market value. She also argued that she was unable to submit any valuation of the market price of her property as at the date of expropriation because valuation companies refused to value property which had been demolished and no longer existed.

9. The first applicant further sought EUR 26,683 for lost income, claiming that she could have let the flat for that total amount since May 2005, had it not been expropriated.

10. The second applicant sought EUR 13,000. This amount was calculated based on the formula prescribed by the amended Article 225 of the Civil Code, which – following the circumstances of the present case – introduced a new method of calculation of the amount of compensation for termination of the right of use (see paragraph 40 of the principal judgment).

(b) The Government's submissions

11. The Government, relying on the valuation report which provided basis for calculating the compensation awarded by the domestic courts (see paragraph 13 of the principal judgment), submitted that the market value per square metre of the expropriated flat as of 27 November 2004, that is around the period when an offer was made to the applicants, amounted to USD 269.2 (approximately EUR 200 at the material time). Based on that assessment, a total of USD 7,000 (approximately EUR 5,265 at the material time) was offered to the first applicant as compensation, plus – if she agreed to give up the flat within the next few days – USD 6,720 (approximately EUR 5,055 at the material time) as a financial incentive.

12. The Government further submitted that the average market value per square metre of a flat similar in size, location and quality to the expropriated flat as at 21 April 2010 amounted to AMD 320,000 or USD 820 (approximately EUR 600 at the material time). In support of this submission the Government relied on a letter dated 21 April 2010 apparently from a private real estate company which indicated the above sums as the probable price per square metre of a flat on Byuzand Street measuring 26 sq. m.

13. The Government also provided a description of the expropriated flat with reference to the above-mentioned valuation report, according to which the flat was situated in an apartment building constructed in 1905. It had a

toilet but no bathroom. The partitions between the floors of the building were made of wood and filled with earth. The building was on an official list of buildings having third degree damage which meant that substantial renovation was required to make possible its further exploitation.

14. The Government further claimed that the market value of the right of use in respect of a square metre of the expropriated flat, if shared by two persons, as of 27 November 2004 amounted to USD 1.5, while as of April 2010 – to AMD 60,000 (approximately EUR 115 at the material time).

15. The Government lastly submitted that real estate prices between the period when a price offer was made to the applicants and April 2010 grew by three to six times and more, depending on the location, size and quality of the property. In this particular case, the growth amounted to about 300% from USD 269.2 to USD 820.

(c) The Court's assessment

16. 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). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). 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 *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

17. In the present case, a violation of Article 1 of Protocol No. 1 was found in respect of the first applicant on the ground that the entire expropriation process, including the procedure for determination of the amount of compensation, was unlawful (see paragraphs 69-72 of the principal judgment). The Court notes that no *restitution in integrum* is possible due to the demolition of the flat. Furthermore, it appears that it has not been possible to compensate the first applicant's loss through provision of a similar flat. Consequently, the Court considers that an award for pecuniary damage must be made.

18. In this respect, the Court notes that it faces a unique situation of unlawful dispossession in which the first applicant, in contrast to other cases

of unlawful dispossession, was actually offered, in December 2004, a sum of money as compensation for the taking of her flat. This sum consisted of the alleged market value of the flat at the material time, namely USD 7,000 (approximately EUR 5,265 at the material time), and a financial incentive in the amount of USD 6,720 (approximately EUR 5,055 at the material time) which was to be paid to her on the condition that she agreed to hand over her property within five days following the offer. The applicant, who declined the offer, was eventually awarded USD 7,000 in May 2005.

19. The Court does not have sufficient material at its disposal which would enable it to conclude that the sum awarded to the first applicant had been adequate and reflected the market value of her flat. The first applicant alleged that it had not. Taking into account that this sum was determined according to a procedure which was found to be unlawful, the Court cannot rule out the possibility that this may have led to an inadequate award. In any event, the Court notes that, since the expropriated flat no longer exists, it is impossible to calculate precisely the amount of the pecuniary damage. Therefore, the assessment of any such damage will have to be made on an equitable basis.

20. Having regard to the relevant principles established in its case-law, the Court considers that, in the particular circumstances of the case, the most appropriate and fair solution would be to award the probable value of the flat at the material time converted to current value to offset the effects of inflation, less the sum already awarded at the domestic level. Making such estimate based on all the materials at its disposal, the Court assesses the amount of the pecuniary damage at EUR 8,000. The Court further considers that this amount must be awarded to the applicants jointly since, according to Article 225 of the Civil Code as in force at the material time, the right of use enjoyed by the second applicant was equivalent to a corresponding share in the first applicant's flat. Consequently, the Court decides to reject the second applicant's claim based on the formula contained in the amended Article 225.

21. The Court lastly notes that the first applicant also claimed damages for lost income, such as potential lost rent. It considers, however, that this particular claim is of a speculative nature and must be rejected.

2. Non-pecuniary damage

22. The first applicant claimed EUR 40,000 and the second applicant claimed EUR 20,000 in respect of non-pecuniary damage.

23. The Government did not comment on these claims.

24. The Court considers that the feelings of powerlessness and frustration arising from the unlawful deprivation of their possessions has caused the applicants non-pecuniary damage that should be compensated in an appropriate manner. Ruling on an equitable basis, as required by

Article 41 of the Convention, it decides to award EUR 2,000 to each of the applicants under this head, or EUR 4,000 in total.

B. Costs and expenses

25. The applicants claimed EUR 2,800 for costs and expenses, including EUR 2,500 lawyer's fees and EUR 300 postal charges. They submitted a contract of legal services signed with their lawyer and a detailed time-sheet in support of this claim.

26. The Government did not comment on this claim.

27. The Court reiterates that legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* [GC], no. 33202/96, § 27, ECHR 2000-I). It notes that in the present case the application also concerned complaints which were declared inadmissible (see paragraphs 78-82 of the principal judgment). Therefore, the claim cannot be allowed in full and a small reduction must be applied. Ruling on an equitable basis, the Court awards the applicants EUR 2,500 for all costs and expenses incurred.

C. Default interest

28. The Court considers it appropriate that the default interest 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. *Holds*

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

(i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 2,500 (two thousand five hundred 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;

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

Done in English, and notified in writing on 7 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Registrar	Josep Casadevall President