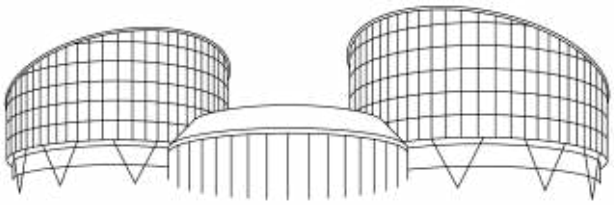

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 10446/05
by Irina YEDIGARYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 15 November 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 12 March 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the declaration submitted by the respondent Government on 15 January 2009 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Irina Yedigaryan, is an Armenian national who was born in 1950 and lives in Yerevan. She was represented before the Court by Mr V. Grigoryan, a lawyer practising in Yerevan. The Armenian

Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

A. The circumstances of the case

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

1. Proceedings concerning the expropriation of the applicant's flat

3. The applicant and her mother co-owned a flat which measured 49 sq. m. and was situated at 34 Pushkin Street, Yerevan. It appears that the flat constituted a part of a one-storey house situated on a plot of land in respect of which the applicant enjoyed a right of use.

4. On 1 August 2002 the Government adopted Decree no. 1151-N, approving the expropriation zones of the real estate situated within the administrative boundaries of the Kentron District of Yerevan to be taken for State needs for town-planning purposes, having a total area of 345,000 sq. m. Byuzand Street was listed as one of the streets falling within such expropriation zones.

5. On 2 February 2004 the State Agency overseeing the implementation of the town-planning projects in the centre of Yerevan addressed a letter to the applicant and her mother stating that their property was situated within an expropriation zone and was to be taken for State needs. The Agency further stated that this property had been valued by a licensed valuation organisation at 12,870 United States dollars (USD) and offered them an equivalent sum in national currency as compensation. An additional sum of USD 10,844.30 was offered as a financial incentive, if they agreed to sign an agreement by 5 February 2004 and to hand over the property to the Agency within the following ten days.

6. It appears that the applicant did not accept the offer, not being satisfied with the amount of compensation offered.

7. On 15 March 2004 the Agency lodged a claim against the applicant and her mother seeking to oblige them to sign an agreement on the taking of the flat for State needs.

8. In the proceedings before the Kentron and Nork-Marash District Court of Yerevan, the applicant submitted, *inter alia*, that her mother had died on 13 April 1999 and the question of inheritance in respect of her share in the flat had not yet been determined.

9. On 4 August 2004 the Kentron and Nork-Marash District Court of Yerevan granted the Agency's claim, ordering the applicant to sign the agreement for a total amount of compensation of USD 12,870 and that she be evicted.

10. On 18 August 2004 the applicant lodged an appeal. In her appeal she admitted, *inter alia*, that the question of legal succession in respect of her late mother's share in the flat had not yet been resolved in accordance with a procedure prescribed by law.

11. On 7 September 2004 the Civil Court of Appeal dismissed the applicant's appeal and granted the Agency's claim on the same grounds as the District Court.

12. On 22 September 2004 the applicant lodged an appeal on points of law. In her appeal she made, *inter alia*, an admission similar to the one made in her appeal of 18 August 2004.

13. On 1 October 2004 the Court of Cassation dismissed the applicant's appeal and upheld the judgment of the Court of Appeal. It appears that within the next few days the house in which the applicant's flat was situated was demolished.

14. The applicant submits that the amount of compensation awarded to her by the above court judgments was never paid.

2. Proceedings concerning the recognition of the applicant's inheritance

15. On 19 April 2004 the applicant and her sister, who lived in the same flat, lodged a claim seeking to have their inheritance recognised in respect of the share of their late mother and the plot of land on which the property in question was situated.

16. On 8 October 2004 the Kentron and Nork-Marash District Court of Yerevan dismissed their claim concerning the plot of land for failure to substantiate it. As regards the share of their deceased mother, the District Court terminated the proceedings in this part on the ground that the house in question had already been demolished.

17. On 22 October 2004 the applicant lodged an appeal.

18. On 22 December 2004 the Civil Court of Appeal upheld the judgment of the District Court.

19. On 4 January 2005 the applicant lodged an appeal on points of law which was dismissed by the Court of Cassation on 10 February 2005.

B. Relevant domestic law

20. For a summary of the relevant domestic provisions see the judgment in the case of *Minasyan and Semerjyan v. Armenia* (no. 27651/05, §§ 23-35, 23 June 2009).

COMPLAINTS

21. The applicant complained under Article 1 of Protocol No. 1 that

(a) the deprivation of her property had not been effected in accordance with the conditions provided for by law, namely Article 28 of the Constitution and the rules applicable to historical and cultural monuments;

(b) she had not received the compensation awarded to her by the courts;

(c) the amount of compensation awarded had been inadequate; and

(d) no compensation had been awarded for the plot of land in respect of which she enjoyed a right of use.

22. The applicant complained under Article 6 of the Convention that, in the proceedings concerning the recognition of her inheritance, the courts had failed to adopt reasoned judgments.

23. The applicant complained under Article 14 of the Convention that she had been discriminated against, because another house belonging to a third person, which was also a historical monument, had been preserved while hers had been demolished.

THE LAW

A. Deprivation of the applicant's flat

24. The applicant complained about the deprivation of her property. She relied on Article 1 of Protocol No. 1 of the Convention which, in so far as relevant, provides 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."

25. Following unsuccessful friendly settlement negotiations the Government informed the Court, by letter dated 15 January 2009, that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

26. The declaration provided as follows:

> "...the Government hereby wish to express – by way of the unilateral declaration – its acknowledgement of the deprivation of the applicants' possessions not in compliance with the requirements of Article 1 of Protocol No. 1 [to] the Convention.
>
> In these circumstances, and having regard to the particular facts of the case, the Government, declare that they offer, instead of the amount of USD 12,870 transferred to the applicant's bank account on the basis of the court judgment, to give to the applicant an apartment, measuring 70 sq. m., in a building the construction works of

which will be finished in 2010. The building will be situated within the administrative boundaries of Kentron District of Yerevan. In addition to the apartment the amount of **AMD 120,000** per month will be paid to the applicant from October 2004 till the date when the construction of the building will be finished (August 2010) for rent of another apartment **(AMD 8,520,000 in total)**. Or as **an alternative** the Government offer to pay the amount of **AMD 29,520,000**. The Government consider this declaration to be reasonable in the light of the Court's case law.

The sum referred to above, that is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the [Convention]. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points.

...

Consequently, the Government are of the opinion that the circumstances of the above application may lead to the conclusion set out in sub-paragraph (c) of Article 37 § 1 of the Convention, thus that it is no longer justified to continue the examination of the application in the light of the Government's unilateral declaration."

27. In an undated letter the applicant objected to the Government's declaration. She submitted that, firstly, her case raised issues which had not been determined by the Court in the past, such as the question of whether her inheritance rights could be considered as possessions. Secondly, there was a disagreement between the parties regarding the facts of the case, namely the scope of her possessions. In particular, she claimed that her possessions included the entire flat and also the underlying plot of land, while the Government contested this. Thirdly, the wording of the Government's admissions was very broad, while the proposed redress was inadequate and insufficient to strike out the case.

28. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. It reiterates that, according to Article 38 § 2 of the Convention, friendly-settlement negotiations are confidential and that Rule 62 § 2 of the Rules of Court further stipulates that no written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in contentious proceedings (see *Meriakri v. Moldova* (striking out), no. 53487/99, § 28, 1 March 2005). The Court will therefore proceed on the basis of the Government's unilateral declaration and the parties' observations submitted outside the framework of friendly-settlement negotiations, and will disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement (see *Estate of Nitschke v. Sweden*, no. 6301/05, § 36, 27 September 2007).

29. The Court points out that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

30. It also notes that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

31. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; also *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

32. The Court will first address the applicant's objection. It notes at the outset that her argument that the case raises issues which had not been previously determined by the Court concerns issues which fall beyond the scope of the present application. More specificially, the applicant had never alleged in her application that her inheritance rights constituted possessions within the meaning of Article 1 of Protocol No. 1 or raised any complaints in this respect. Her complaints under that Article were limited exclusively to questions of expropriation of her flat, as well as the alleged termination of her right of use in respect of the land, which will be addressed below. As far as the expropriation of the applicant's flat is concerned, the Court notes that it has already established in a case against Armenia the nature and extent of the obligations which arise for the respondent State under Article 1 of Protocol No. 1 as regards the deprivation of property in the centre of Yerevan for the purposes of implementation of town-planning projects under the Government Decree no. 1151-N (see *Minasyan and Semerjyan*, cited above, §§ 69-72). It notes that the circumstances of the present case and the nature of the applicant's complaint are almost identical.

33. As to the alleged disagreement regarding the facts, the Court does not consider that any dispute between the parties concerning the facts of the case is capable of automatically preventing it from striking out an application under Article 37 § 1 (c) on the basis of a unilateral declaration. The dispute must be serious and genuine; it must fall within the scope of the application and the issues raised in it, and must be consistent with the parties' earlier submissions.

34. In the present case, the Court notes that the applicant herself admitted explicitly before the domestic courts that questions of legal

succession in respect of her late mother's share in the flat had not been resolved (see paragraphs 8 and 10 above). Similarly, in her application to the Court she admitted that her ownership had been registered only in respect of half of the flat. The same concerns the underlying plot of land: the applicant never claimed during the expropriation proceedings that the land in question was her property. Similarly, in her application to the Court she explicitly stated that she only enjoyed a right of use in respect of the land. Moreover, the applicant instituted a separate set of proceedings in the domestic courts seeking unsuccessfully to have her ownership recognised in respect of her late mother's share in the flat and the plot of land (see paragraphs 15-19 above). It was only in her observations and just satisfaction claim submitted on 16 November 2007 that the applicant claimed ownership in respect of those properties. Thus, the Court finds that there is no genuine dispute regarding the facts of the case, since the applicant's allegations are not supported by the materials of the case and are in direct conflict with her own earlier submissions.

35. Lastly, turning to the nature and scope of the proposed redress, the Court notes that the Government have proposed two alternatives: provision of a flat or payment of a sum of money, both of which are proposed instead of the amount already paid to the applicant. Having regard to the first alternative, the Court is not convinced that this is an acceptable proposal, since the undertaking to provide a flat was made conditional on the return of the sum of money already paid to the applicant. Thus, this undertaking could not be considered truly unilateral as its implementation was predicated on the other party's fulfillment of certain additional requirements (see *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et seq., 23 March 2006). Furthermore, the Government failed to provide sufficient details of the flat in question. The Court therefore rejects this alternative.

36. The Court, however, is of a different opinion as far as the second alternative is concerned, namely the payment of AMD 29,520,000 minus USD 12,870. The Court considers that the nature and the amount of the redress proposed in this alternative, even after the sum of USD 12,870 has been deducted, is consistent with the principles established and the amount awarded in the just satisfaction judgment in the case of *Minasyan and Semerjyan* ((just satisfaction), no. 27651/05, §§ 17-21, 7 June 2011). For the purposes of facilitating the implementation of the Government's declaration and avoiding any ambiguity in the calculation of the resulting amount, the Court points out that the sum of USD 12,870 to be deducted from AMD 29,520,000 is to be converted into Armenian drams at the rate applicable at the date of settlement.

37. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed which the Court finds reasonable in the circumstances of the case, the Court

considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

38. Moreover, in light of the above considerations, and in particular given the existing case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

39. As regards the question of implementation of the Government's declaration, the Court points out that the present ruling is without prejudice to any decision it might take, in case of a failure by the Government to comply with its undertakings, to restore the present application to the list of cases pursuant to Article 37 § 2 of the Convention (see *E.G. v. Poland* (dec.), no. 50425/99, § 29, ECHR 2008-... (extracts)).

B. Other alleged violations of the Convention and Protocol No. 1

40. The applicant also complained under Article 1 of Protocol No. 1 that the amount of compensation awarded by the domestic court had been inadequate and that no compensation had been awarded to her for terminating her right of use in respect of the underlying plot of land. She further raised a number of complaints under Articles 6, 8, 13 and 14 of the Convention.

41. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the applications in this part are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 1 of Protocol No. 1, the terms of the redress proposed in the second alternative contained in that declaration and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application in its part concerning the deprivation of the applicant's flat out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares inadmissible the remainder of the application.

Santiago Quesada
Registrar

Josep Casadevall
President