



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42702/05
by Shushaniki HOVHANNISYAN and Gegham GEVORGYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 29 June 2010 as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges*,

and Santiago Quesada, *Registrar*,

Having regard to the above application lodged on 23 November 2005,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Shushaniki Hovhannisyán and Mr Gegham Gevorgyan, are Armenian nationals who were born in 1945 and 1968 respectively and live in Verin Ptghni, Armenia. They are represented before the Court by Mr T. Atanesyan, a lawyer practising in Yerevan. The Armenian Government (“the Government”) are 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.

3. The applicants jointly owned a house which measured 49.2 sq. m and was situated at 15 Byuzand Street, Yerevan. It appears that they also enjoyed a right of lease in respect of the underlying plot of land.

4. On 1 August 2002 the Government adopted Decree no. 1151-N, approving the expropriation zones of the immovable property (plots of land, buildings and constructions) situated within the administrative boundaries of the Central District of Yerevan to be taken for the needs of the State for the purpose of carrying out construction projects, covering a total area of 345,000 sq. m. Byuzand Street was listed as one of the streets falling within such expropriation zones.

5. On 17 June 2004 the Government decided to contract out the construction of one of the sections of Byuzand Street – which was to be renamed Main Avenue – to a private company, Vizkon Ltd.

6. On 1 October 2004 Vizkon Ltd and the Yerevan Mayor's Office signed an agreement which, *inter alia*, authorised the former to negotiate directly with the owners of the property subject to expropriation and, should such negotiations fail, to institute court proceedings on behalf of the State, seeking forced expropriation of such property.

7. It appears that Vizkon Ltd unsuccessfully attempted to organise a valuation of the applicants' house in order to offer them compensation for the purpose of expropriation, since the applicants created obstacles.

8. On an unspecified date Vizkon Ltd instituted proceedings against the applicants on behalf of the State. Referring to, *inter alia*, Government Decree no. 1151-N, the plaintiff sought to oblige them to allow a valuation of their house, to terminate their ownership of the house through payment of compensation based on the results of such valuation, and to have them evicted.

9. On an unspecified date the applicants lodged a counter-claim with the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների անաջին ասյանի դատարան*) in which they contested the constitutionality of Government Decree no. 1151-N. It appears that this counter-claim was not admitted on the ground that the District Court was not competent to decide upon the constitutionality of Government decrees. The applicants further requested the court to put into motion the procedure for testing the constitutionality of the above Decree, which was similarly rejected.

10. It appears that at some point the value of the applicants' house was estimated at USD 21,000 by a valuation company.

11. On 17 March 2005 the District Court granted the claim of Vizkon Ltd, terminating the applicants' ownership in respect of the house, awarding them the Armenian dram (AMD) equivalent of USD 21,000 and ordering their eviction. The court based its findings on Articles 218 and 283 of the Civil Code, while the amount of compensation was determined on the basis of the above valuation report.

12. On 30 March 2005 the applicants lodged an appeal.

13. On 13 May 2005 the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) granted the claim of Vizkon Ltd on the same grounds as the District Court.

14. On 26 May 2005 the applicants lodged an appeal on points of law. In their appeal they argued, *inter alia*, that the deprivation of their property was unlawful and contravened Article 28 of the Constitution.

15. On 8 July 2005 the Court of Cassation (*ՀՀ վճարիչ դատարան*) dismissed the applicants' appeal.

16. On 8 August 2005 the relevant enforcement proceedings were instituted.

17. On 20 October 2005 the applicants signed an agreement with Vizkon Ltd on termination of their ownership in respect of the immovable property situated on a plot of land to be taken for State needs and payment of compensation. According to this agreement, which was concluded for the purpose of implementation of construction projects envisaged by Government Decrees nos. 1151-N and 909-N, the applicants agreed to give up their ownership of the house and their lease of the underlying plot of land in favour of Vizkon Ltd for a compensation in the net total amount of AMD 13,433,310 and to vacate the premises by 20 November 2005.

B. Relevant domestic law

1. The domestic provisions related to the question of lawfulness of the alleged interference

18. 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).

2. Other relevant domestic provisions

The Law on Enforcement of Judicial Acts

19. Section 8 provides that the parties are entitled to reach a friendly settlement in the course of enforcement proceedings.

20. According to Section 42 § 1 (3), the bailiff shall terminate the enforcement proceedings if the creditor and the debtor have reached a friendly settlement which has been approved by a court.

COMPLAINTS

21. The applicants complained under Article 1 of Protocol No. 1 that the deprivation of their property had not been effected in accordance with a law and that there had been no public interest for this deprivation.

22. The applicants complained under Article 6 of the Convention that the courts had unlawfully refused to admit their counter-claim and to put into motion the procedure for testing the constitutionality of Government Decree no. 1151-N.

THE LAW

23. The applicants complained that the deprivation of their house was in violation of the guarantees of 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.”

1. The parties' submissions

(a) The Government

(i) Claim of non-exhaustion of domestic remedies

24. The Government submitted that the applicants' house was not expropriated by the State but that they gave up their ownership in favour of the State of their own free will. In particular, as a result of the court proceedings on 20 October 2005 the applicants signed an agreement with Vizkon Ltd and sold their house. This was done on the basis of Section 8 of the Law on Enforcement of Judicial Acts, which provides that the parties are entitled to reach a friendly settlement in the course of enforcement proceedings. Thus, the sole ground for termination of the applicants'

ownership was the above agreement which they had signed with the State and thereby voluntarily abandoned their ownership. That agreement was reached through negotiations and mutual understanding and contained terms which were not included in the court judgments, such as higher compensation and compensation for terminating the right of lease of land. The applicants' allegation that they had been compelled to enter into this agreement was therefore unsubstantiated. In this respect they had also failed to exhaust the domestic remedies, since it was open to them to contest the terms of the above allegedly forced and unfavourable transaction before the courts and to seek its annulment, which they failed to do.

(ii) Request to strike the application out of the list

25. The Government further requested the Court to strike the application out of its list of cases under Article 37 § 1 (b) of the Convention on the ground that the matter had been already resolved, taking into account that the agreement signed between the applicants and the State on 20 October 2005 amounted to a friendly settlement between the parties.

(b) The applicants

26. The applicants submitted that they were forced to sign the above agreement, because the courts had already ordered the termination of their ownership. They were in a desperate situation and were at risk of being homeless.

2. The Court's assessment

27. The Court notes at the outset that the applicants raised the allegation that the underlying plot of land was also their property and that it was unlawfully taken from them together with their house for the first time in their observations to the Court submitted on 30 November 2007. It follows that this complaint was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

28. As regards the complaint concerning the alleged deprivation of the applicants' house, the Court notes that the parties disagreed whether there was an interference with the applicants' possessions. The Government claimed that the applicants voluntarily sold their house to the State, while the applicants claimed that it was a forced expropriation. In the Court's opinion, this issue raises questions regarding the applicants' victim status.

29. The Court notes that under Article 34 of the Convention it may receive applications from any person claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The applicants in the present case allege a violation of their rights guaranteed by Article 1 of Protocol No. 1 which, *inter alia*, covers deprivation of possessions and subjects it to certain

conditions. The concept of “deprivation” covers both formal expropriation and also measures which amount to a *de facto* expropriation (see, among other authorities, *Fredin v. Sweden (no. 1)*, 18 February 1991, § 42, Series A no. 192).

30. The Court observes that in the present case the applicants agreed to give up ownership of their house by entering into a civil transaction with Vizkon Ltd, which acted on behalf of the State. Thus, there was no expropriation of the applicants' property as such, but rather a consensual termination of their ownership through payment of compensation. It is true that prior to the conclusion of the agreement between the applicants and Vizkon Ltd the domestic courts had issued judgments ordering termination of the applicants' ownership of their house. However, ultimately it was not these judgments but the above-mentioned agreement which constituted the legal basis for the termination of the applicants' ownership. In such circumstances, the Court considers that the applicants cannot claim to be victims of an alleged violation of Article 1 of Protocol No. 1.

31. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4 of the Convention.

32. The applicants further complained under Article 6 of the Convention that the domestic courts unlawfully refused to admit their counter-claim and to put into motion the procedure for testing the constitutionality of Government Decree no. 1151-N.

33. Having regard to all the material in its possession, and in so far as these complaints fall 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 this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President