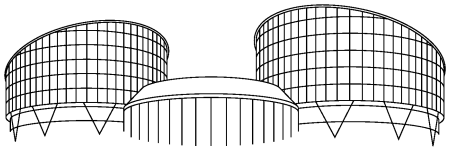

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GHARIBYAN AND OTHERS v. ARMENIA

(Application no. 19940/05)

JUDGMENT

STRASBOURG

13 November 2014

FINAL

13/02/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gharibyan and Others v. Armenia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 21 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 19940/05) 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 three Armenian nationals, Mr Grigori Gharibyan, Mrs Gohar Gharibyan and Mrs Anna Gharibyan ("the applicants"), on 1 June 2005.

2. The applicants were represented by Mr A. 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.

3. On 28 September 2007 the application was communicated to the Government.

4. On 15 November 2011 the Court decided to strike part of the application out of its list of cases in accordance with Article 37 § 1 (a) of the Convention on the basis of the Government's unilateral declaration and to declare the remainder inadmissible.

5. On 10 July 2012 the Court decided to restore part of the application to its list of cases in accordance with Article 37 § 2 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1946, 1954 and 1985 respectively and live in Yerevan.

7. The applicants jointly owned a flat which measured 44.1 sq. m. and was situated at 25 Byuzand Street, Yerevan.

8. 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. A special body, the Yerevan Construction and Investment Project Implementation Agency (hereafter, the Agency) was set up to manage the implementation of the construction projects.

9. On 7 September 2004 the applicants' flat was valued upon the request of the Agency by a valuation organisation. The market value of the flat was found to be 16,350 United States dollars (USD).

10. By a letter of 14 January 2005 the Agency informed the applicants that their flat was subject to expropriation and that it had been valued at USD 16,350 by an independent licensed organisation. An additional sum of USD 12,638.55 was offered to the applicants as a financial incentive if they signed an agreement within five days.

11. The applicants did not accept the offer, not being satisfied with the amount of compensation offered.

12. On an unspecified date the Agency lodged a claim against the applicants, seeking to oblige them to sign an agreement on the taking of their flat for State needs and to have them evicted.

13. On 1 March 2005 the Kentron and Nork-Marash District Court of Yerevan granted the Agency's claim, ordering the applicants to sign the agreement for the total amount of USD 16,350.

14. On 15 March 2005 the applicants lodged an appeal.

15. On 30 March 2005 the Civil Court of Appeal granted the Agency's claim upon appeal.

16. On 13 April 2005 the applicants lodged an appeal on points of law, in which they argued, *inter alia*, that the deprivation of their property was not prescribed by law as required by Article 28 of the Constitution.

17. On 26 May 2005 the Court of Cassation decided to dismiss the applicants' appeal.

18. On an unspecified date the awarded sum was paid to the applicants.

II. RELEVANT DOMESTIC LAW

19. For a summary of the relevant domestic provisions see the judgment in the case of *Minasyan and Semerjyan v. Armenia* (no. 27651/05, §§ 23-25, 23 June 2009).

THE LAW

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

20. The applicants complained under Article 1 of Protocol No. 1 and Article 8 of the Convention that the deprivation of their flat had not been prescribed by law. The Court considers that their complaint falls to be examined under Article 1 of Protocol No. 1 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."

A. Admissibility

21. 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.

B. Merits

22. The applicants submitted that the deprivation of their possessions had not been carried out under the conditions provided for by law since it had been effected in violation of the guarantees of Article 28 of the Constitution.

23. The Government admitted that the expropriation of the applicants' flat had not been carried out under the conditions provided for by law and constituted a violation of Article 1 of Protocol No. 1.

24. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph

recognises that States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII). The Court further reiterates that the phrase "subject to the conditions provided for by law" requires in the first place the existence of and compliance with adequately accessible and sufficiently precise domestic legal provisions (see *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 110, Series A no. 102).

25. The Court notes that it has already examined identical complaints and arguments in a number of cases against Armenia and concluded that the deprivation of property was not carried out in compliance with "conditions provided for by law" (see, for example, *Minasyan and Semerjyan*, cited above, §§ 69-77; *Tunyan and Others v. Armenia*, no. 22812/05, §§ 35-39, 9 October 2012; and *Danielyan and Others v. Armenia*, no. 25825/05, §§ 35-39, 9 October 2012). The Court does not see any reason to depart from that finding in the present case.

26. There has accordingly been a violation of 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 applicants claimed that they should be awarded as compensation the market value of the flat which had been promised to them by the Government's unenforced unilateral declaration. The flat in question measured 115.6 sq. m. and the average market value per square metre amounted to USD 3,000. The applicants further claimed EUR 70,000 for non-pecuniary damage.

29. The Government objected to the proposed method of calculation of compensation for pecuniary damage and submitted that such compensation should be based on the violation found and not on the offer made by the Government in their unilateral declaration. The Government further submitted that the amount of non-pecuniary damages claimed was excessive.

30. The Court agrees with the Government that pecuniary damage must be calculated on the basis of the violation found. It notes that it has

previously awarded pecuniary damages in an identical situation (see *Minasyan and Semerjyan v. Armenia* (just satisfaction), no. 27651/05, §§ 17-21, 7 June 2011), which it finds to be fully applicable to the present case. Using the same approach and making an assessment based on all the materials at its disposal, the Court estimates the pecuniary damage suffered at EUR 34,000 and decides to award this amount jointly to the applicants, while dismissing the remainder of their claim. It further decides to award each applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicants did not claim any costs and expenses, legal services having been provided to them on a *pro bono* basis.

C. Default interest

32. 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 complaint concerning the deprivation of the applicants' flat admissible;

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

3. *Holds*
   (a) that the respondent State is to pay, 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 34,000 (thirty-four thousand euros) to the applicants jointly, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 6,000 (six thousand euros) to each applicant, 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;

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

Done in English, and notified in writing on 13 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President