CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40864/06
by Ashot GRIGORYAN and Others
against Armenia

The European Court of Human Rights (Third Section), sitting on 3 March 2009 as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having regard to the above application lodged on 4 October 2006,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ashot Grigoryan (the first applicant), Ms Marine Kpryan (the second applicant), Mr Hayk Grigoryan (the third applicant), Mr Armen Grigoryan (the fourth applicant), Ms Anzhela Asribabayan (the fifth applicant), Mr Kaspar Sarkisov (the sixth applicant), Ms Rosalia Sarkisova (the seventh applicant), Ms Elina Sarkisova (the eighth applicant) and Mr Aleksandr Sarkisov (the ninth applicant), were born in 1954, 1958, 1986, 1988, 1955, 1947, 1977, 1978 and 1982 respectively. The first five applicants and the eighth applicant are Armenian nationals, while the sixth, seventh and ninth

applicants are Russian nationals. The first four applicants live in Yerevan, the following three applicants live in Moscow and the last two applicants live in Alma Ata and Istanbul respectively. They are represented before the Court by Mr V. Grigoryan, a lawyer practising in Yerevan.

A. The circumstances of the case

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

The applicants are two families. The first family is composed of the first and the second applicants who are husband and wife, and the third and fourth applicants who are their children. The second family is composed of the fifth and sixth applicants who are also wife and husband, and the seventh, eighth and ninth applicants who are their children.

The second and fifth applicants owned jointly with a third person, V.M., a plot of land measuring 303 sq. m. and a house measuring 143.18 sq. m. situated at 3/2 Abovyan Street, Yerevan (hereafter, the first property). The two applicants also jointly owned another house measuring 40.71 sq. m. situated at the same address (hereafter, the second property). The second and fifth applicants' share in the first property amounted to 18/25, while the remainder belonged to V.M.

On 1 August 2002 the Government adopted Decree no. 1151-N, approving the alienation zones of the real estate situated within the administrative boundaries of the Kentron District of Yerevan to be taken for State needs, having a total area of 345,000 sq. m. A special body, the "Yerevan Construction and Investment Project Implementation Agency" (*«Երևանի կառուցապատման ներդրումային ծրագրերի իրականացման գրասենյակ» պետական ոչ առևտրային կազմակերպություն* – hereafter, "the Agency") was set up to manage the implementation of the construction projects.

It appears that on 30 October 2003 the State Real Estate Registry registered limitations on the second and fifth applicants' ownership right in respect of the property in question.

On 20 January 2004 the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) adopted a judgment approving a friendly settlement between the second and the fifth applicants and V.M., according to which they paid V.M. 65,000 US dollars (USD) and acquired his share in the jointly owned property. According to the applicants, their full ownership in respect of the property in question could not be registered at the State Real Estate Registry because of the above limitations.

On 8 July 2004 the Government adopted Decree no. 1047-N approving the alienation zone of property to be taken for State needs, including houses and plots of land adjacent to building no. 5 on Abovyan Street and

measuring 1,430 sq. m., which apparently included the second and the fifth applicants' properties.

It appears that on an unspecified date the Agency informed the second and fifth applicants that their property was situated in the alienation zone and was to be taken for State needs. It further appears that the Agency attempted to organise a valuation of their property in order to offer them compensation. The attempt was unsuccessful since the applicants created obstacles.

On 12 April 2005 the Agency lodged a claim with the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) against the second and the fifth applicants, seeking to oblige them to sign an agreement on the taking of their property for State needs and to have them and their family members evicted.

On 19 April 2005 the Agency filed a motion with the District Court, seeking to oblige the defendants to allow a valuation of their property.

On the same date the District Court decided to grant this motion, allowing the plaintiff to enter the defendants' house for valuation purposes. This decision was subject to immediate execution.

It appears that on an unspecified date a representative of the Agency, together with experts from a valuation organisation, Artin Enterprise Ltd, forcibly entered the defendants' house for valuation purposes.

On 25 July 2005 Artin Enterprise Ltd produced two valuation reports upon the Agency's request. The market value of the first property was found to be 56,222,960 Armenian drams (AMD) (approximately 104,222 euros (EUR)) and that of the second property was found to be 6,861,000 (approximately EUR 12,718) as at 21 July 2005.

On 7 September 2005 the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) granted the Agency's claim, ordering that the second and fifth applicants be evicted together with their family members. The District Court determined the amount of compensation based on the above valuation reports, awarding AMD 6,861,000 to the two applicants for the second property and AMD 56,222,960 jointly to the two applicants and V.M. for the first property. The applicants were not present at this hearing.

On 21 September 2005 the representative of the second and fifth applicants lodged an appeal.

On 29 October 2005 the second applicant requested another valuation company, Elephant Realty Ltd, to assess the market value of the property in question.

On 1 November 2005 Elephant Realty Ltd produced two valuation reports. The market value of the first property was found to be

AMD 182,000,000 (approximately EUR 335,236) and that of the second property was found to be 11,391,000 (approximately EUR 20,981).

It appears that in the proceedings before the Civil Court of Appeal the second and fifth applicants submitted the valuation reports of Elephant Realty Ltd which, according to them, were not taken into account by the Court of Appeal. It further appears that they unsuccessfully sought to have another expert opinion requested in view of the discrepancies between the valuation reports prepared by the two valuation companies.

It also appears that the second and fifth applicants argued before the Court of Appeal that V.M. was not entitled to any compensation in view of the friendly settlement reached on 20 January 2004. It finally appears that they unsuccessfully sought to have the first and sixth applicants engaged in the proceedings as co-defendants, alleging that they also had ownership rights in respect of the property in question as spouses.

On 26 December 2005 the Civil Court of Appeal decided to uphold the judgment of the District Court.

On 12 January 2006 the second and fifth applicants lodged an appeal on points of law.

On the same date the first and sixth applicants also lodged appeals on points of law, claiming that they were also co-owners of the property in question and seeking to be engaged in the proceedings and to have compensation awarded.

On 23 March 2006 the second and fifth applicants lodged a supplement to their initial appeal.

On 7 April 2006 the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) examined and dismissed the second and fifth applicants' appeals. The Court of Cassation further decided to return the appeals of the first and sixth applicants unexamined, since they had failed to pay the full amount of the court fee, which amounted to AMD 20,000, and did not request an exemption.

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

It appears that in May 2006 the applicants were evicted from their home which was demolished immediately thereafter.

B. Relevant domestic law

1. *The Constitution of 1995 (prior to the amendments introduced on 27 November 2005)*

The relevant provisions of the Constitution, prior to the amendments introduced on 27 November 2005, read as follows:

Article 6

"Armenia is a State based on rule of law. The Constitution of [Armenia] has a supreme legal force and its provisions are directly applicable. Laws which are found to be incompatible with the Constitution, as well as other legal acts which are found to be incompatible with the Constitution and laws, have no legal force."

Article 8

"The right to property is recognised and protected in the Republic of Armenia.

The owner has the right to dispose of, use and manage the property belonging to him in the way he sees fit. ..."

Article 28

"Every one has the right to property and the right to bequeath. ...

Property can be expropriated for the needs of society and the State only in exceptional cases of paramount public interest, on the basis of a law and with prior equivalent compensation."

The above Article 28, as amended on 27 November 2005, reads as follows:

Article 31

"Every one 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. ..."

2. The Civil Code (in force from 1 January 1999)

The relevant provisions of the Civil Code read as follows:

Article 3: Principles of civil law

"2. Citizens and legal persons acquire and implement their civil rights by their own will and in their interests. They are free to define their rights and obligations on the basis of a contract and to stipulate any condition of the contract as long as it does not contradict the law.

Limitations may be placed on civil rights only by law, if it is necessary for the protection of national and public security, public order, public health and morals, and the rights, freedoms, honour and good reputation of others. ..."

Article 135: State registration of rights in respect of property

"1. The right of ownership and other material rights in respect of property, limitations on such rights, and their origin, transfer and termination are subject to State registration..."

3. The Code of Civil Procedure (in force from 12 January 1999)

The relevant provisions of the Code of Civil Procedure, as in force at the material time, read as follows:

Article 159: Grounds for annulling unlawful acts of public authorities, local self-government bodies and their officials or for contesting their actions (inaction)

"Unlawful acts of public authorities, local self-government bodies and their officials can be annulled or their actions (inaction) can be contested (hereafter, annulling the unlawful act) if the act in question contradicts the law and if there is evidence that the applicant's rights and (or) freedoms guaranteed by the Armenian Constitution and laws have been violated. ..."

Article 160: An a**pplication seeking to annul unlawful acts of public authorities, local self-government bodies and their officials**

"1. An application seeking to annul unlawful acts of public authorities, local self-government bodies and their officials shall be submitted to a court dealing with civil cases or the Commercial Court, pursuant to their jurisdiction over cases.

The court cannot examine applications seeking to annul those acts, the determination of conformity of which with the Constitution of Armenia falls within the exclusive jurisdiction of the Constitutional Court."

4. The Law on Legal Acts (in force from 31 May 2002)

The relevant provisions of the Law on Legal Acts read as follows:

Article 8: The Constitution of the Republic of Armenia

"2. The Constitution of [Armenia] has a supreme legal force and its provisions are directly applicable. The laws and other legal acts are adopted on the basis of the Constitution or for the purpose of its implementation and must not contradict it. ..."

Article 14: Decrees of the Government of the Republic of Armenia

"2. The decrees of the Government of the Republic of Armenia must not contradict[, *inter alia*,] the Constitution of the Republic of Armenia, the laws of the Republic of Armenia, [and] the decisions of the Constitutional Court of the Republic of Armenia..."

5. 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, գնայնի առաջարկը ձևավորելու և իրացնելու կարգը հաստատելու մասին)

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.

6. *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 սահմանում կառուցապատման ծրագրերի իրականացման միջոցառումների մասին)

For the purpose of 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.

7. *Government Decree no. 1047-N of 8 July 2004 Concerning the Taking for State Needs of the Area Adjacent to Building No. 5 on Abovyan Street of Yerevan for the Purpose of Construction Projects and the Provision of a Plot of Land Without a Tender for the Purpose of Investment Projects* (ՀՀ կառավարության 2004 թ. հուլիսի 8-ի թիվ 1047-Ն որոշում Երևանի Աբովյան փողոցի N 5 շենքին հարակից տարածքը կառուցապատման ծրագրերի իրականացման նպատակով պետության կարիքների համար վերցնելու և ներդրումային ծրագրի իրականացման նպատակով առանց մրցույթի հողամաս տրամադրելու մասին)

For the purpose of implementation of construction projects in Yerevan, the Government decided to approve the expropriation zone of the real estate (plots of land, buildings and constructions) adjacent to building no. 5 on Abovyan Street of Yerevan to be taken for the needs of the State, with a total area of 1,430 sq. m.

8. *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)

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 market prices into account, 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.

9. *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*)

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

10. The decision of the Constitutional Court of 16 November 2006 on the Conformity of Article 160 of the Code of Civil Procedure with the Constitution, adopted on the basis of applications lodged by citizens Sofik Gasparyan and Artak Zeynalyan (ՀՀ սահմանադրական դատարանի 2006 թ. նոյեմբերի 16-ի որոշումը քաղաքացիների Սոֆիկ Գասպարյանի և Արտակ Զեյնալյանի դիմումների հիման վրա՝ ՀՀ քաղաքացիական դատավարության օրենսգրքի 160 հոդվածի 1-ին կետի՝ ՀՀ սահմանադրությանը համապատասխանության հարցը որոշելու վերաբերյալ գործով*)*

The Constitutional Court found paragraph 2 of Article 160 § 1 incompatible with Articles 18 and 19 of the Constitution, as amended on 27 November 2005, because it failed to guarantee balance of power, created a serious gap in terms of judicial control of legal acts and endangered the implementation of an individual's right to judicial protection of his rights and freedoms as guaranteed by paragraph 1 of Article 18 of the Constitution.

COMPLAINTS

1. The applicants complain under Articles 6 and 13 of the Convention about not having access to court because the civil procedure rules precluded them from contesting before the courts the lawfulness of Government and President's decrees related to the expropriation projects, namely Decree no. 1151-N of 1 August 2002 and Decree no. 1047-N of 8 July 2004.

2. The applicants complain under Article 6 of the Convention that

(a) the courts were not independent and impartial. In particular, in all other similar cases the courts had always granted the Government's claims. The proceedings were of a purely formal character and were conducted very fast, without proper examination of evidence and the circumstances of the case, and with disregard for domestic and international law. The courts failed to adopt reasoned judgments. Furthermore, both the District Court

and the Court of Cassation failed to summon them to the respective hearings, while none of the courts engaged the applicants, other than the second and fifth, as parties to the proceedings despite the fact that their civil rights were being affected;

(b) the principle of equality of arms was not respected. In particular, the Civil Court of Appeal failed to take into account the valuation reports submitted by them and based its assessment of the amount of compensation solely on the valuation reports prepared upon the request of the Agency; and

(c) the Civil Court of Appeal failed to address their argument that V.M. was no longer a co-owner of the property in question.

3. The first and sixth applicants complain under Article 6 of the Convention that they were denied access to the Court of Cassation.

4. The applicants complain under Article 8 of the Convention that the District Court unlawfully authorised a forced entry into their flat for valuation purposes. They also complain under Article 13 of the Convention that they had no effective remedies in respect of these complaints. The first, second, fifth and sixth applicants complain under the same articles that their house was demolished before the expropriation claim was finally determined by the courts.

5. The applicants complain under Article 3 of the Convention and Article 1 of Protocol No. 1 about the deprivation of their property. They argue, in particular, that the deprivation was unlawful and did not pursue any public interest. Furthermore, the compensation paid to the second and fifth applicants was inadequate, while no compensation at all was paid to the other applicants.

THE LAW

1. The applicants complain of being deprived of the possibility to contest a number of Government decrees before the courts. They invoke Articles 6 and 13 of the Convention. The Court considers that this issue falls to be examined under Article 6 of the Convention which, in so far as relevant, provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicants raise a number of other complaints under Article 6 of the Convention, cited above.

The Court reiterates at the outset that under the terms of Article 35 § 1 of the Convention, it may only deal with a matter after domestic remedies have been exhausted. Furthermore, the Convention institutions have consistently taken the view that that condition is not satisfied if an appeal has been declared inadmissible for failure to comply with a formal requirement (see, among other authorities, *Ben Salah Adraqui and Dhaime v. Spain* (dec.), no. 45023/98, ECHR 2000-IV).

In the present case, the Court notes that the first and the sixth applicants' appeals on points of law were not examined by the Court of Cassation on account of the failure to pay the full amount of the required court fee. It follows that the first and the sixth applicants failed to comply with a formal requirement when lodging their appeals on points of law and, by doing so, failed to exhaust the domestic remedies. As regards the third, the fourth, the seventh and the eighth applicants, these applicants did not lodge any appeals whatsoever in the course of the court proceedings in question.

It follows that these complaints, in so far as they concern the first, the third, the fourth, the sixth, the seventh and the eighth applicants, must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

As regards the second and the fifth applicants, the Court, having regard to all the material in its possession, considers that the complaints raised in sub-paragraph (a) of paragraph 2 above, do not disclose any appearance of a violation of the fair trial guarantees of Article 6 of the Convention.

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.

As far as the complaints raised in sub-paragraphs (b) and (c) of paragraph 2 above are concerned, the Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The first and the sixth applicants complain of denial of access to the Court of Cassation. They invoke Article 6 of the Convention, cited above.

The Court reiterates that the requirement to pay fees to civil courts in connection with claims or appeals they are asked to determine cannot be regarded as a restriction on the right of access to a court that is incompatible *per se* with Article 6 § 1 of the Convention (see *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 64, 26 July 2005). In the present case, the first and the sixth applicants failed to pay the full amount of the court fee required by law (AMD 20,000 which was approximately EUR 36 at the material time). They did not ask for an exemption or allege that the amount to be paid was exorbitant. Thus, it appears that the applicants simply failed to comply with a procedural requirement. In such circumstances, the Court considers that the decision of the Court of Cassation to return their appeal

was not arbitrary or unreasonable and it did not impose a disproportionate restriction on the first and the sixth applicants' right of access to a court.

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.

4. The applicants raise a number of complaints under Articles 8 and 13 of the Convention.

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.

5. The applicants complain about the deprivation of their property and invoke Article 3 of the Convention and Article 1 of Protocol No. 1. The Court considers that this issue falls to be examined under Article 1 of Protocol No. 1, which provides:

> "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."

The Court considers that the complaints under Article 1 of Protocol No. 1 of the applicants other than the second and the fifth applicants must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies for the same reasons as their complaints under Article 6 of the Convention examined above.

As regards the second and the fifth applicants, the Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaint concerning the lack of access to a court and the second and the fifth applicants' complaints concerning the lack of equality of arms, the failure of the Civil Court of Appeal to address an argument regarding V.M. and the deprivation of their property;

Declares the remainder of the application inadmissible.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President