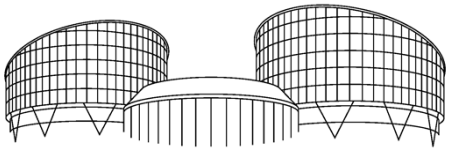

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TAMRAZYAN v. ARMENIA

(Application no. 42588/10)

JUDGMENT

STRASBOURG

19 March 2020

This judgment is final but it may be subject to editorial revision.

In the case of Tamrazyan v. Armenia,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Armen Harutyunyan,
Pere Pastor Vilanova, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the above application 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 an Armenian national, Mr Babken Tamrazyan ("the applicant"), on 21 July 2010

the parties' observations,

Noting that on 19 May 2014 the Government were given notice of the complaints concerning the alleged violation of the applicant's right to a fair trial and his right to the peaceful enjoyment of his possessions and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court,

Having deliberated in private on 25 February 2020,

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

INTRODUCTION

1. In his application the applicant complained of the alienation to a third person of a plot of land which had been in his possession for around twenty-three years and in respect of which he had, under domestic law, a pre-emptive right of acquisition by virtue of adverse possession. The applicant also complained of the failure of the Court of Cassation to meet its obligation to give reasons for its decision in the impugned proceedings. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

THE FACTS

2. The applicant was born in 1931 and lives in Teghut village. The applicant was represented by Mr A. Ghazaryan and Ms A. Yesayan, lawyers practising in Yerevan.

3. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights.

4. For about twenty-three years, from 1986 until 2009, the applicant had been in possession of a plot of land measuring about 1,300 sq.m. adjacent to Teghut village, in the Tavoush region. He had put up a fence and a garden shed, planted fruit trees and made the necessary arrangements for water

supply. According to the applicant, the land in question measured 1,294 sq.m. However, in the majority of official documents its size is stated to be 1,300 sq.m.

5. Teghut village was previously situated within the administrative boundaries of Haghartsin village (formerly known as Kuybishev). From 1986 until 1990 the land was registered in the applicant's name, according to the Kuybishev collective farms register (*Կույբիշևի սովխոզի տնտեսությունների գրանցման մատյան*).

6. In 1994 Teghut village was separated from Haghartsin, becoming a separate administrative unit. However, the plot of land in the applicant's possession was not included within the administrative boundaries of either Haghartsin or Teghut.

7. From 1995 until 2007 (except for 1998 and 1999) the applicant paid rent for the use of the land to the community administration of Teghut, which regularly transferred the money paid to the State budget.

8. In April 2008 the applicant, who continued to possess and cultivate the plot of land at issue, was informed that a year before, in April 2007, the Tavoush Regional Administration had sold it to a third person, A.H., at public auction.

9. By a letter of 3 February 2009 the Dilijan territorial division of the State Real Estate Registry informed the applicant that on 23 April 2007 A.H. had registered his title in respect of the land. The letter further referred, *inter alia*, to an announcement in the newspaper and the decision of the Governor of Tavoush Region (hereinafter - "the Governor") of 27 March 2007 about the alienation of land to A.H. by public auction.

10. The applicant subsequently found out that the announcement referred to in the above letter had been placed in the *Republic of Armenia* newspaper issue of 21 February 2007. The announcement stated, in particular, that on 20 March of the same year the Tavoush Regional Administration had organised a public auction for the sale of a plot of land situated within the administrative boundaries of the region. The plot of land was said to measure 1,394 sq. m.

11. According to the applicant, he managed to obtain a copy of the Governor's decision of 27 March 2007 only in 2009. This decision stated that A.H. was the winner of the auction of 20 March 2007 and that the plot of land was to be sold to him. Accordingly, on 3 April 2007 the Tavoush Regional Administration had concluded a contract of sale of land with A.H.

12. On 21 April 2009 the applicant lodged a claim with the Administrative Court seeking to have the sale of the plot of land by the Governor and the subsequent registration of A.H.'s title annulled, and oblige the Governor to conclude with him an agreement on direct sale of the land.

In his claim the applicant submitted, *inter alia*, that since 1986 he had been in possession of the plot of land measuring 1,300 sq.m. adjacent to

Teghut village where he had made significant improvements over the years. Given that, albeit without legal registration, he had used the State land continuously, openly and in good faith for more than ten years, he had thus obtained a pre-emptive right to acquire this property. In this regard the applicant relied on Articles 65, 66, 67 and 72 of the Land Code and the case-law of the Court of Cassation, in particular its decision no. 3-357 of 30 March 2007 stating the criteria for acquisition of State and community property by virtue of adverse possession.

13. On 8 July 2009 the Administrative Court granted the applicant's claims in their entirety. With reference to the relevant certificate issued by the Head of Teghut village community, evidence showing the payments of rent to the community budget and witness evidence, the Administrative Court found it substantiated that from at least 1995 until the decision of the Governor to sell the plot of land by public auction, the applicant had for more than ten years been in possession of it continuously, openly and in good faith. Relying on paragraph 2 of Article 72 of the Land Code, the court concluded that the applicant had had a pre-emptive right to acquire the property in dispute. The court further concluded that, contrary to the requirements of Article 66 of the Land Code, the Governor had authorised the sale of the land at public auction while that land was subject to direct sale to the person who had a pre-emptive right to acquire it. Finally, the court referred to the decision no. 3-537 (VD) of the Court of Cassation of 30 March 2007 to state that for recognition of the existence of a pre-emptive right to acquire property, the fact that a person had been in possession of a property continuously, openly and in good faith for ten years prevailed over evidence of the existence of ownership rights of another person in respect of that property.

14. A.H. lodged an appeal on points of law. He argued, in particular, that in the course of the proceedings it had not been substantiated that the applicant had the right of use in respect of the land and that the Governor had the authority to alienate it to a third person, to him in this particular case, if he wished.

In his reply the applicant argued, *inter alia*, that the plot of land in question was subject to direct sale to him as the person having a pre-emptive right to acquire it and that accordingly the Governor's decision to alienate it by auction had been unlawful. The applicant also submitted that he met all the requirements of Article 72 § 2 of the Land Code and those of the case-law of the Court of Cassation, in particular those set out in its decision no. 3-357 of 30 March 2007, to claim that he had a pre-emptive right to acquire the land in question by virtue of adverse possession.

15. On 2 April 2010 the Court of Cassation quashed the judgment of the Administrative Court and rejected the applicant's claims. The decision, which was not subject to appeal, stated in particular the following:

"... the fact that ... [the applicant] has paid rent to the community of Teghut cannot be essential for the present case since the plot of land in question is not situated within the administrative boundaries of Teghut community, therefore the fact of payment of rent to Teghut community cannot serve to substantiate the fact of having been in possession of the plot of land in a continuous and open manner and in good faith for more than ten years.

According to paragraph 3 of Article 72 of the Land Code, the right to property by virtue of adverse possession in respect of a plot of land owned by another person is regulated by the Civil Code.

According to Article 187 § 1 the citizen or the legal entity who is not the owner of the real estate but has possessed it as his own property continuously, openly and in good faith for ten years, acquires a right of ownership in respect of that property (adverse possession).

It follows from the examination of the said provision that Article 187 of the Civil Code is not applicable to land owned by the State and the communities (see Grigor Khachatryan v. Tamo Tamoyan, ... the decision of the Court of Cassation no. 3-153 (VD) of 27 March 2007)."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. The Land Code (in force from 15 June 2001)

16. Article 51 provides that citizens and legal entities may acquire rights in respect of plots of land and their rights of use of plots of land may be restricted by virtue of, *inter alia*, adverse possession.

17. Article 55 states that land which is not owned by citizens, legal entities and communities is the property of the State.

18. According to Article 63, plots of land owned by the State can be alienated via donation of the right of ownership, direct sale and auction.

19. Article 64 sets out the cases for alienation of plots of land owned by the State and the communities through donation of the right of ownership and Article 65 sets out the relevant procedure.

20. Article 66 § 1 (4) states that plots of land owned by the State and the communities are subject to direct sale to persons having a pre-emptive right of acquisition under the law.

According to Article 66 § 2, the price for plots of land subject to direct sale is set at the cadastral value of the particular plot of land.

21. Article 67 § 1 provides that plots of land owned by the State and the communities are sold at auction with the exception of cases set out in Articles 65 and 66.

22. According to Article 72 § 2, citizens and legal entities who, although without legal recognition of their rights, have used lands owned by the State and the communities for more than ten years continuously, openly and in

good faith, have a pre-emptive right to acquire plots from those lands if the acquisition of the plots of land as property is not forbidden.

According to Article 72 § 3, the right to property by virtue of adverse possession in respect of a plot of land owned by another person, that is, not the State, is regulated by the Civil Code.

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

23. According to Article 187 § 1 the citizen or the legal entity who is not the owner of the real estate but has possessed it as his own property continuously, openly and in good faith for ten years, acquires a right of ownership in respect of that property (adverse possession).

II. RELEVANT DOMESTIC PRACTICE

A. Decision no. 3-1835 (A) of the Civil Chamber of the Court of Cassation of 12 December 2007

24. Referring to Article 72 of the Land Code, the Court of Cassation noted that issues relating to adverse possession of land owned by the State and the communities are regulated by the Land Code while issues relating to adverse possession of plots of land owned by other persons are regulated by the Civil Code.

In this case the Court of Cassation concluded that the lower court had erred in applying Article 187 of the Civil Code, given that the plot of land in dispute was the property of the State and therefore the provisions of Article 72 of the Land Code should have been applied.

B. Decision no. 3-537 (VD) of the Civil Chamber of the Court of Cassation of 30 March 2007

25. The Court of Cassation stated that for recognition of the existence of a pre-emptive right to acquire property by virtue of adverse possession, the fact that a person had been in possession of a property for ten years continuously, openly and in good faith prevailed over evidence of the existence of ownership rights of another person in respect of that property.

The Court of Cassation gave an interpretation of Article 72 § 2 of the Land Code by stating that the pre-emptive right to acquire plots of land by adverse possession derives from the following necessary conditions:

1) the person has been in possession of land owned by the State for more than ten years continuously, in an open manner and in good faith,

2) the acquisition of title to the given plots of land is not prohibited,

3) they are being sold or donated for use for the same purpose or if the plots of land meet the requirements of Article 64 § 2 of the Land Code.

C. Decision no. 3-153 (VD) of the Civil Chamber of the Court of Cassation of 27 March 2007

26. The case concerned a property-related dispute between two private parties. The Court of Cassation concluded that even in the absence of a sale contract certified by a notary, the buyer who had been in possession of the land for more than ten years continuously, in an open manner and in good faith, had title to the property. The Court of Cassation also reiterated that in each case the court must state the factual and legal grounds for its judgment. The legal justification of a judgment is the choice and application of a substantive legal norm or of norms in respect of the established facts and legal issues. Not only should the provision of a normative act that contains the applicable norm be indicated in a judgment, but the reason for applying that particular norm should also be given.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant complained that the failure by the Court of Cassation to state the law applicable to his case, address important arguments raised by him and state reasons for departing from its own case-law had been in breach of Article 6 § 1 of the Convention which reads, in so far as relevant, as follows:

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

A. Admissibility

28. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

29. The applicant complained that in its decision of 2 April 2010 the Court of Cassation did not state any reasons for not applying the relevant provisions of the Land Code in the circumstances where it had been established that the land in question was the property of the State. The Court of Cassation in general failed to state which legal provision was applicable to his case. In particular, having rejected the applicability of the two main legal provisions regulating the pre-emptive right to acquire property by adverse possession, that is Article 187 of the Civil Code and Article 72 of

the Land Code, the Court of Cassation had not referred to any other legal provisions, either from the Civil Code or from the Land Code, which had formed the basis for its conclusion that the applicant did not enjoy a pre-emptive right to acquire the plot of land by adverse possession.

Furthermore, the Court of Cassation had failed to address the important arguments raised by him that were essential for the examination of the case. In particular, he had asked the Court of Cassation to examine the facts and circumstances establishing his possession and use of the land openly, continuously and in good faith in the light of the principles enshrined in its own decision no. 3-537 (VD) of 30 March 2007. He had also asked the Court of Cassation to examine the case from the standpoint of Article 1 of Protocol No. 1 to the Convention. However, the Court of Cassation had disregarded those arguments. As opposed to the Administrative Court, the Court of Cassation failed to address the essential issue raised in the case – whether or not there existed evidence substantiating the fact that the land had been in his open, continuous possession in good faith for more than ten years, contrary to its own above-mentioned case-law. Instead, the Court of Cassation, without giving any reasons, merely focused on the evidence showing that the land was owned by the State and that it was situated outside the administrative boundaries of Teghut community. At the same time, the Court of Cassation did not state in the impugned decision the reasons for not applying its case-law concerning the pre-emptive right to acquire property owned by the State or the communities by adverse possession (decisions nos. 3-1835 (A) and 3-537 (VD)). Similarly, the Court of Cassation did not explain its choice of the decision no. 3-153 (VD) as applicable case-law.

30. The Government averred that the reasons given by the Court of Cassation in its decision of 2 April 2010 were sufficient to comply with the requirements of Article 6 § 1 of the Convention. Overall, having concluded as to the inapplicability of Article 187 of the Civil Code and Article 72 of the Land Code, the Court of Cassation had substantiated the application of some other legal norms, including the ones prescribed by the Land Code. The Government argued that, by rejecting the applicability of Article 187 of the Civil Code, the Court of Cassation had in fact established the applicability of certain provisions of the Land Code but not those referred to by the Administrative Court in its judgment of 8 July 2009 and in the applicant's reply to the appeal on points of law lodged by A.H.

Even if in its decision of 2 April 2010 the Court of Cassation had only stated the reasons for granting the appeal on points of law lodged by A.H. and quashing the findings of the lower court, this would still be sufficient for the purposes of Article 6 § 1 of the Convention. Having carried out a legal assessment of the arguments raised by A.H. in his appeal on points of law and of the findings of the lower court, the Court of Cassation directly

referred to the essential arguments raised by the applicant in his reply to the appeal on points of law.

Lastly, the Government submitted that the Court of Cassation had concluded that its decisions no. 3-1835 (A) of 12 December 2007 and no. 3-537 (VD) of 30 March 2007 were not applicable to the applicant's case due to the different factual circumstances. At the same time, the Court of Cassation had referred to its decision no. 3-153 (VD) of 27 March 2007, considering it applicable to the circumstances of the applicant's case.

2. The Court's assessment

31. The Court reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. Article 6 § 1 obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question of whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A; *Ajdarić v. Croatia*, no. 20883/09, § 34, 13 December 2011, and *Carmel Saliba v. Malta*, no. 24221/13, § 66, 29 November 2016).

32. The effect of Article 6 § 1 is, *inter alia*, to place the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 59, Series A no. 288).

33. It has to be determined whether the above conditions were satisfied in the instant case in so far as the decision of the Court of Cassation of 2 April 2010 is concerned.

34. In this context, the Court is mindful of the fact that it has accepted before that in dismissing an appeal an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). The Court observes, however, that at the relevant time administrative justice in Armenia was carried out at two levels of jurisdiction. In particular, the decisions and judgments of administrative courts were subject to appeal only to the Court of Cassation. Notably, in the instant case the Court of Cassation not only quashed the judgment of the Administrative Court but gave a fresh ruling on the merits in a decision which, as already mentioned, was not subject to

further appeal, whereby it completely reversed the findings of the lower court. In these circumstances, the Court considers that the observance by the Court of Cassation of its obligation to state adequately the reasons for its decision should be examined in the light of the principles applicable to the examination of a case by a first instance court.

35. As it appears from the relevant provisions of the domestic law and the practice of the Court of Cassation, the right to pre-emptive acquisition of property by adverse possession is subject to a different legal regime depending on whether the property is owned by the State and communities or a private person. Hence, according to the state of the law and the judicial practice, questions relating to adverse possession of land owned by the State and the communities are regulated by Article 72 of the Land Code which confers on persons who, although without legal recognition of their rights, have used lands owned by the State and the communities for more than ten years continuously, openly and in good faith, a pre-emptive right to acquire plots from those lands. Notably, neither the Land Code nor the case-law of the Court of Cassation makes a distinction between land owned by the State and that owned by the community in so far as the choice of the relevant legal regime is concerned. At the same time, Article 187 of the Civil Code sets out the conditions for acquiring ownership by adverse possession of property owned by others, not the State and the community (see paragraphs 20, 21, 22, 23 and 24 above).

36. The Court notes that the Administrative Court, having examined the applicant's relevant arguments, documentary and witness evidence, concluded in its judgment of 8 July 2009 that the applicant had satisfied the requirements of Article 72 of the Land Code, which was the applicable provision of domestic law given the circumstances of the case (see paragraph 13 above). It is not clear, however, which legal provision was found to be applicable to the applicant's case according to the decision of 2 April 2010 of the Court of Cassation. In particular, having concluded that Article 187 of the Civil Code was not applicable to the case since it did not concern land owned by the State and the communities, the Court of Cassation did not indicate which legal provision was eventually applicable to the applicant's case (see paragraph 15 above). Thus, on the one hand the Court of Cassation found that Article 187 of the Civil Code was not applicable and on the other hand it did not state that Article 72 of the Land Code would be applicable instead. Given the fact that the land in question was under State ownership, the implied finding of the Court of Cassation that Article 72 of the Land Code was not applicable to the applicant's case was contrary to its findings expressed in the decision no. 3-1835 (A) of 12 December 2007 (see paragraph 24 above) whereas no reasons were given to explain such departure from its own case-law.

The Government argued that, having concluded that Article 72 of the Land Code was not applicable to the applicant's case, the Court of

Cassation had duly substantiated its choice of application of "other legal norms", including those prescribed by the Land Code (see paragraph 30 above). The Court observes, however, that this argument does not find any support in the text of the impugned decision. Furthermore, the Government itself failed to specify which "other legal norms" the Court of Cassation had found to be applicable to the applicant's case and merely stated that those norms were "not the ones that were referred to by the Administrative Court and the applicant" (ibid.).

37. The Court observes that, prior to the examination of the applicant's case, the Court of Cassation had examined several cases concerning the pre-emptive right to acquire property, whether owned by the State and communities or other persons, by adverse possession (see paragraphs 24, 25 and 26 above). The Court further observes that in the decision of 2 April 2010 the Court of Cassation made reference to its decision no. 3-153 (VD) of 27 March 2007 which, however, concerned the issue of transfer of title to property from one private party to another based on adverse possession in the circumstances where, as mentioned above, it had already concluded that Article 187 of the Civil Code was not applicable to the applicant's case.

The Government submitted that the Court of Cassation had considered that its decision no. 3-153 (VD) was applicable to the applicant's case rather than its decisions no. 3-1835 (A) of 12 December 2007 and no. 3-537 (VD) of 30 March 2007, given the factual differences (see paragraph 30 above). However, in the absence of any reasoning, it is not at all clear that the Court of Cassation found that its decision no. 3-153 (VD) was the applicable case-law. On the contrary, as it appears from the relevant part of the decision, the Court of Cassation made a reference to its decision no. 3-153 (VD) to support its finding that Article 187 was not applicable to the applicant's case rather than to state that decision as applicable case-law in view of its factual circumstances (see paragraph 15 above). Moreover, the impugned decision of the Court of Cassation does not contain any references to its decisions nos. 3-1835 (A) and 3-537 (VD) let alone any analysis of the factual background of the applicant's case in the light of the findings expressed in those decisions although the applicant's case specifically concerned land owned by the State. The Court therefore finds it difficult to accept this argument raised by the Government either.

38. The Court notes that in its decision no. 3-537 (VD) of 30 March 2007 the Court of Cassation had expressed a finding of principle as regards the determination of the issue of existence of a pre-emptive right to acquire property by adverse possession. The Court of Cassation had stated in particular that the fact that a person had been in possession of a property for ten years continuously, openly and in good faith prevailed over evidence of the existence of ownership rights of another person in respect of that property (see paragraph 25 above).

In the applicant's case, however, the Court of Cassation adopted the opposite approach by giving precedence to the fact that the land was owned by the State as it was situated outside the administrative boundaries of the community while the applicant had paid rent to the community budget. In doing so, the Court of Cassation failed to address all the evidence examined by the lower court (see paragraph 13 above) and the applicant's arguments submitted in his reply to the appeal on points of law lodged by A.H. (see paragraph 14 above) to the effect that he had been in possession of the land continuously, openly and in good faith for more than ten years – issues that were essential for the determination of the question of whether or not the applicant could claim a pre-emptive right under domestic law. In these circumstances, the Court considers that the Court of Cassation failed to address the applicant's arguments that were specific, pertinent and important for the determination of the case (see *Pronina v. Ukraine*, no. 63566/00, § 25, 18 July 2006).

39. The Court considers that the various shortcomings in the proceedings mentioned above, particularly the failure by the Court of Cassation to state adequately the applicable law, address important arguments raised by the applicant and give reasons for not applying its own case-law are sufficient to conclude that the applicant did not have the benefit of fair proceedings.

40. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention.

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

41. The applicant submitted that he had *ex lege* acquired ownership of the above-mentioned plot of land by adverse possession whereas it was alienated to a third person by the authorities. He complained that the refusal of the Court of Cassation to acknowledge his ownership in the above proceedings had violated his property rights. He relied on Article 1 of Protocol No. 1 to the Convention, which reads:

> "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."

A. Admissibility

42. The Government argued that the applicant did not have a "possession" within the meaning of Article 1 of Protocol No. 1.

43. The applicant claimed that his pre-emptive right to acquire the land at issue by virtue of adverse possession had sufficient basis in domestic law.

44. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or claims that are sufficiently established to be regarded as "assets". Where a proprietary interest is in the nature of a claim, it may be regarded as an "asset" only if there is a sufficient basis for that interest in national law (for example, where there is settled case-law of the domestic courts confirming it), that is when the claim is sufficiently established as to be enforceable. The Court has also referred to claims in respect of which an applicant can argue that he has at least a "legitimate expectation" that they will be realised, that is, that he or she will obtain effective enjoyment of a property right. However, a legitimate expectation has no independent existence; it must be attached to a proprietary interest for which there is a sufficient legal basis in national law (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 142-143, 20 March 2018 and the case-law cited therein).

45. The Court notes that under Armenian law a person obtains a pre-emptive right to acquire land owned by the State or the communities when all statutory conditions are met, in the event that the authorities make a decision to alienate the land. That is, under domestic law, the plot of land with regard to which a person has a pre-emptive right of acquisition by adverse possession is subject to direct sale to that person (see paragraphs 20, 22 and 25 above).

46. In the present case the authorities, having made the decision to alienate the plot of land in respect of which the applicant claims to have had a pre-emptive right of acquisition by adverse possession, sold the land at issue at public auction to a third person. In these circumstances, the question of whether or not the applicant satisfied the statutory conditions for acquiring a pre-emptive right of acquisition by adverse possession was to be determined in the proceedings before the competent courts whereby the applicant challenged the authorities' decision to alienate the property at public auction. The Court therefore considers that the proprietary interest relied on by the applicant was in the nature of a claim and cannot be characterised as an "existing possession" within the meaning of the Court's case-law (see *Trgo v. Croatia*, no. 35298/04, § 35, 11 June 2009).

47. It would appear from the findings of the Administrative Court (see paragraph 13 above) that it was established that the applicant had been in continuous possession of the land in question in good faith since at least

1995, that is for more than twenty years, and therefore satisfied the statutory conditions set out in Article 72 of the Land Code. As the Court concluded above, the Court of Cassation failed to conduct a proper examination of the facts and evidence assessed by the Administrative Court when reaching the above findings (see paragraphs 38 and 39 above). The Court thus considers that the applicant's claim had a sufficient basis in national law to qualify as an "asset" protected by Article 1 of Protocol No. 1.

48. It follows that the Government's objection as to the non-applicability of Article 1 of Protocol No. 1 must be dismissed.

49. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

50. The applicant submitted that the plot of land in question had been in his undisturbed possession for more than twenty-three years. He had made improvements – put up a fence, cleaned the landscape, built a garden shed - and cultivated the land. The authorities never took any measures to regain its possession or notify him that he had been in possession of the land unlawfully. On the contrary, the authorities had collected rent for the lease of the land for years on the basis of the relevant contracts concluded between him and Teghut community administration, which the authorities never attempted to invalidate. In those circumstances he had a pre-emptive right to acquire the land by virtue of adverse possession, had the authorities decided to alienate it. Nevertheless, the authorities sold the land at public auction to a third person, contrary to the relevant provisions of the Land Code, while in its decision of 2 April 2010 the Court of Cassation refused to acknowledge his pre-emptive right to acquire the land. In doing so, the Court of Cassation took a strictly formalistic approach to base its findings on the fact that the land belonged to the State and the applicant did not have title to it. However, the fact that the ownership of land had been transferred from the community to the State at some point was irrelevant, since he had continued to possess the land and pay rent for it. The Governor's decision to hold an auction in respect of the land was unlawful since it was subject to direct sale to him by virtue of Article 66 § 1 (4) of the Land Code and the exception provided in Article 67 § 1 of the same Code.

The applicant lastly submitted that he had to bear an excessive individual burden since the authorities, being aware of the fact that he had been in possession of the land for years and in the circumstances where he had a pre-emptive right to acquire the land under domestic law, had chosen to place notification of the auction in the 21 February 2007 issue of *Republic of Armenia*, a newspaper which was not even delivered to his village. Even

if it had been delivered to his village, he could not have been expected to check every edition of that newspaper over all the years that he had used the land in question to find out whether the authorities had possibly decided to put it up for sale.

51. The Government argued, with reference to the decision of the Court of Cassation of 2 April 2010, that the applicant did not have a pre-emptive right to acquire the land at issue by virtue of adverse possession. Hence, there had been no interference with the applicant's right to peaceful enjoyment of his possessions. The applicant was simply a tenant of the plot of land enjoying neither its ownership nor a pre-emptive right to acquire it. In any event, he could have participated in the relevant public auction organised by the Governor and acquired the plot of land, which he failed to do.

2. The Court's assessment

52. In the light of the above finding that the applicant's claim was sufficiently established to qualify as an "asset" attracting the protection of Article 1 of Protocol No. 1, the Court considers that the alienation of the land at issue at public auction and the refusal of the Court of Cassation to acknowledge the existence of the applicant's pre-emptive right of acquisition of the land by adverse possession undoubtedly constituted an interference with his property rights. The Court must therefore determine whether the interference was justified, that is, whether it was lawful, pursued an aim that was in the public (general) interest and whether it was proportional to that aim.

53. The Court observes that Article 67 § 1 of the Land Code expressly prohibits the alienation via a public auction of plots of land owned by the State and the communities in cases where those plots are subject to direct sale. At the same time Article 66 § 1 (4) provides that plots of land owned by the State and the communities are subject to direct sale to persons who have a pre-emptive right of acquisition in respect of those plots. The conditions to be met in order to claim a pre-emptive right of acquisition by adverse possession of land owned by the State and the communities are set out in Article 72 of the same Code (see paragraphs 20, 21 and 22 above).

54. As noted above, by its judgment of 8 July 2009 (see paragraph 13 above) the Administrative Court established that the Governor's decision to alienate the land at issue to a third party at public auction had been unlawful, given that the applicant had had a pre-emptive right to acquire that land by adverse possession since he satisfied the statutory conditions set out in Article 72 of the Land Code as interpreted by the Court of Cassation in its decision no. 3-537 of 30 March 2007 (see paragraphs 22 and 25 above). This finding of the Administrative Court was based on the evidence, including documentary evidence and witness statements, to the effect that

the applicant had been in open, continuous possession of the land in question in good faith for more than twenty years.

55. As the Court found above, having overturned the findings of the Administrative Court by its decision of 2 April 2010, the Court of Cassation not only failed to state the applicable law but it also departed from its own case-law concerning adverse possession. Furthermore, the Court of Cassation did not address the factual findings of the Administrative Court by re-assessing the evidence examined in the previous proceedings and did not address at all the question of the lawfulness of the Governor's decision to alienate the land at issue at public auction. The only argument put forward by the Court of Cassation to refuse to acknowledge the applicant's pre-emptive right to acquire the land at issue by adverse possession was that he had paid rent to the community budget whereas the land was situated outside the community's administrative boundaries and therefore was owned by the State (see paragraphs 15, 36, 36 and 38 above). It is not clear, however, for what reason that argument was pertinent for the determination of the dispute in the circumstances where neither Article 72 of the Land Code nor the relevant case-law of the Court of Cassation made any distinction based on whether a plot of land was owned by the State or the community in so far as the applicable legal regime was concerned (see paragraph 35 above).

56. The Court reiterates that it is sensitive to the subsidiary nature of its role and that its power to review compliance with domestic law is limited. However, having regard to its earlier finding that the Court of Cassation failed to give a reasoned decision for overturning the findings of the Administrative Court, which had previously acknowledged the unlawfulness of the alienation of the plot of land that had been in the applicant's continuous possession in good faith for more than twenty years, the Court considers that there are cogent elements in the present case leading it to find that the interference with the applicant's right to peaceful enjoyment of his possessions was not lawful (see, *a contrario*, *Radomilja and Others*, cited above, § 150).

57. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

In so far as pecuniary damage was concerned, the applicant stated that he had borne expenses for developing the land such as for putting up a fence, cleaning the landscape and so on, but he had no receipts to substantiate those, since in rural areas people could very rarely obtain a receipt. He left the question of compensation for pecuniary damage to the Court's discretion.

60. The Government argued that the applicant had not submitted any relevant documents to substantiate his claim for pecuniary damage and that his claim should therefore be rejected. As to the non-pecuniary damage, the Government considered that this claim was not supported either by relevant documents. In any event, the amount claimed in respect of non-pecuniary damage was excessive and should be rejected.

61. The Court observes that the applicant has neither made a specific itemised claim for the alleged pecuniary damage suffered nor has he submitted any supporting documents; it therefore rejects this claim.

62. The Court considers that the feelings of powerlessness and frustration arising from the applicant's inability to have his ownership recognised in respect of the land that had been in his possession for such a prolonged period of time have caused him non-pecuniary damage that should be compensated for in an appropriate manner. Ruling on an equitable basis, as required by Article 41 of the Convention, it decides to grant the applicant's claim in respect of non-pecuniary damage and to award him EUR 5,000 under this head.

B. Costs and expenses

63. The applicant made no claims for costs and expenses.

C. Default interest

64. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 5,000 (five thousand euros), to be converted into Armenian drams at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 March 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Krzysztof Wojtyczek
Deputy Registrar	President