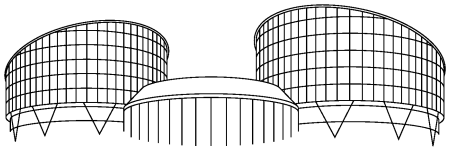

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAFARYAN v. ARMENIA

(Application no. 576/06)

JUDGMENT

STRASBOURG

21 January 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Safaryan v. Armenia,

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

Mirjana Lazarova Trajkovska, *President,*
Päivi Hirvelä,
Ledi Bianku,
Kristina Pardalos,
Linos-Alexandre Sicilianos,
Paul Mahoney,
Armen Harutyunyan, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 December 2015,

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

PROCEDURE

1. The case originated in an application (no. 576/06) 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, Ms Varya Safaryan ("the applicant"), on 10 December 2005.

2. The applicant was represented by Mr H. Alumyan, 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. The applicant alleged, in particular, that the authorities' refusals of her requests to have her property divided and transferred to her children and register her title in respect of the pavilion built on the plot of land owned by her were in breach of the guarantees of Article 1 of Protocol No. 1 and Article 8 of the Convention.

4. On 20 October 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1934 and lives in Yerevan.

6. She owned a plot of land which measured 815 sq. m. and was situated in the centre of Yerevan. She also owned two houses and a garage situated on the plot. It appears that the applicant shared her household with her four children.

7. Before 1993 the applicant, without permission, built on her plot of land a pavilion (*շինություն*) measuring about 230 sq. m which she used as a venue for trade. The pavilion featured in the ownership certificate issued to the applicant on 30 November 1998 as a "half-ruined construction".

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, having a total area of 345,000 sq. m. It appears that the applicant's plot of land fell within one such zone.

A. Proceedings against the notary office

9. On 7 May 2004 the applicant applied to a notary office with a request to donate her property to her four children and seeking to make that transaction official.

10. The notary office refused this request, with reference to Government Decree no. 1151-N, stating that the applicant's property was situated in an expropriation zone.

11. The applicant contested this refusal before the courts. It appears that on 14 June 2004 the Kentron and Nork-Marash District Court of Yerevan dismissed her claim. The applicant lodged an appeal.

12. On 28 July 2004 the Civil Court of Appeal granted the applicant's claim and ordered the notary office to formalise the transaction. It found that the refusal was in violation of the law since the applicant's request derived from Article 163 of the Civil Code. Besides, Government Decree no. 1151-N did not envisage any limitations on the type of transaction that the applicant sought to conclude. No appeal was lodged against this judgment, which entered into force.

B. Proceedings against the State Real Estate Registry

13. On an unspecified date the applicant applied to the State Real Estate Registry ("SRER"), seeking to divide her property into four parts and to transfer ownership to her children. She also requested that her title be registered in respect of the pavilion.

14. It appears that on 23 February 2004 the SRER refused both requests. As regards the refusal of the second request, it appears that the SRER referred to Article 221 of the Civil Code and Government Decree no. 1748-N.

15. The applicant contested this refusal before the courts.

16. In the proceedings before the Kentron and Nork-Marash District Court of Yerevan the representative of the SRER submitted that the applicant's request had been refused because her property was situated in an expropriation zone and included unauthorised constructions. Its division would be contrary to Government Decrees nos. 1151-N and 2020-N.

17. On 20 May 2004 the District Court decided to dismiss the applicant's claim. It found that the applicant was the sole owner of the property in question and it was groundless to seek its division or sever any part of it. As regards the registration of ownership in respect of the pavilion, this claim was similarly groundless since the applicant's plot of land was situated in an expropriation zone, while the procedure prescribed by Government Decree no. 1748-N, pursuant to its paragraph 3, did not apply to unauthorised constructions built on plots of land falling within such expropriation zones.

18. On 28 May 2004 the applicant lodged an appeal.

19. On 29 April 2005 the Civil Court of Appeal upheld the judgment of the District Court. The Court of Appeal found that the applicant had applied to the SRER with a request to have her property divided into four parts, which had been refused because the property was situated in an expropriation zone and included unauthorised constructions. Its division into four parts would be contrary to Government Decrees nos. 1151-N and 2020-N. As regards the refusal to register her title in respect of the pavilion, the Court of Appeal recapitulated the findings of the District Court.

20. On 12 May 2005 the applicant lodged an appeal on points of law. In her appeal she argued that the Court of Appeal had ignored the findings made in its final judgment of 28 July 2004. Furthermore, the fact that the plot of land was situated in an expropriation zone could not serve as a basis for restricting her rights as an owner which she enjoyed under Article 163 of the Civil Code. She further argued that the pavilion in question was immovable property and the refusal to register her title in its respect deprived her of the right to receive compensation at the time of expropriation.

21. On 17 June 2005 the Court of Cassation dismissed the applicant's appeal on the same grounds.

II. RELEVANT DOMESTIC LAW

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

22. According to Article 163, the owner has the right to possess, use and dispose of his property as he sees fit. The owner is entitled to carry out any action in respect of his property which does not contravene the law and violate the rights and lawful interests of others, including selling his

property, to transfer the right to possess, use and dispose of the property to others, to mortgage or to make use of it in any other way.

23. According to Article 188, as in force at the material time, an unauthorised structure was a habitable building, construction, other structure or other immovable property built on a plot of land not allocated for that purpose in accordance with a procedure prescribed by law and other legal acts or built without requisite permission or built with serious breaches of town-planning norms and rules. The person who had built an unauthorised structure did not acquire ownership rights in its respect. He was not entitled to make use of the structure, including by selling, donating and renting or carrying out other transactions, except for cases prescribed by law. The owner of the plot of land on which the construction was built could be granted ownership rights in respect of the unauthorised structure by the courts. The recognition of the title of such persons could be refused if the maintenance of the structure violated the rights and interests of others or posed threats to the life and health of others.

24. According to Article 221, in force at the material time, the owner of a plot of land subject to be taken for the needs of the State was entitled, from the date of the decision on taking the plot of land until an agreement was reached or a court judgment was adopted concerning the taking of the plot of land, to possess, use and dispose of it.

B. Law on the Legal Status of Unauthorised Buildings and Constructions and Plots of Land Occupied without Authorisation (in force from 22 February 2003 until 22 February 2005 – «Ինքնակամ կառուցված շենքերի, շինությունների և ինքնակամ զբաղեցված հողամասերի իրավական կարգավիճակի մասին» ՀՀ օրենք)

25. This Law set out the grounds and procedure for recognition of ownership rights in respect of unauthorised buildings and constructions.

26. According to Article 2, this Law applied to buildings and constructions which had been built without permission prior to the entry into force of the Law and had been registered at the Real Estate Registry prior to 15 May 2001, including semi-structures whose construction had been completed by 50% or more.

27. According to Article 4 §§ 2 and 6, the ownership right in respect of unauthorised buildings and constructions built on plots of land owned by private persons or legal entities could be recognised, if such recognition was not contrary to town-planning norms. This right was to be recognised by the head of the community (the Mayor of Yerevan in the city of Yerevan).

28. According to Article 8 §§ 1 and 2, applications for recognition of ownership rights were to be submitted to the local department of the SRER.

Within five days from the date of receipt of an application, the local department of the SRER was to submit a plan of the building or construction in question to the Mayor of Yerevan, who would then decide to reject or grant the application.

29. According to Article 10 § 4, the procedure for examination of applications and requests concerning unauthorised buildings and constructions which had not been registered at the Real Estate Registry prior to 15 May 2001, as well as before the entry into force of this Law, was to be established by the Government.

C. 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 որոշումը՝ Երևանի Կենտրոն թաղային համայնքի վարչական սահմանում կառուցապատման ծրագրերի իրականացման միջոցառումների մասին)

30. For the purpose of implementation of construction projects in Yerevan, the Government decided to approve 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, with a total area of 345,000 sq. m. The Mayor of Yerevan was instructed to determine the boundaries of the plots of land to be taken for the needs of the State and to register them at the Real Estate Registry. The owners and users of the immovable property situated within the expropriation zones were to be informed of the deadlines, sources of financing and the procedure for taking their immovable property. Valuation of the immovable property in question was to be organised and carried out by the relevant licensed organisations.

D. Government Decree no. 1748-N of 15 May 2003 (Մինչև «Ինքնակամ կառուցված շենքերի, շինությունների և ինքնակամ զբաղեցված հողամասերի իրավական կարգավիճակի մասին» ՀՀ օրենքն ուժի մեջ մտնելը հաշվառումից դուրս մնացած ինքնակամ կառուցված շենքերի, շինությունների, ինքնակամ զբաղեցված կամ ՀՀ օրենսդրության խախտումներով օտարված (տրամադրված, ձեռք բերված) պետական սեփականության հողամասերի վերաբերյալ դիմումների և հայտերի քննարկման կարգը հաստատելու մասին)

31. By this decree the Government approved the procedure envisaged by Article 10 § 4 of the Law on the Legal Status of Unauthorised Buildings and Constructions and Plots of Land Occupied without Authorisation.

32. According to paragraph 2, unauthorised buildings and constructions which had been registered prior to 15 May 2001 and were shown on the maps prepared in the context of mapping carried out for the purpose of the initial State registration, as well as those which had been properly recorded with ownership certificates prior to the introduction of the system of State registration of property rights (1 March 1998), were considered as "registered prior to the entry into force of the Law". Applications and requests seeking to determine the status of unregistered unauthorised buildings and constructions could be filed until the Law was effective.

33. According to paragraph 3, this procedure did not apply to unauthorised buildings and constructions which, according to Government decrees, were situated within the boundaries of plots of lands to be taken for the needs of the State or society.

34. According to paragraph 2 of the approved procedure, the owners of unregistered buildings and constructions were to apply to the local department of the SRER to have their rights recognised in respect of such buildings and constructions.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

35. On 10 September 2010 the Government submitted a unilateral declaration to the Court acknowledging that the prohibition on dividing the applicant's property and donating it to her children was not compatible with the requirements of Article 1 of Protocol No. 1. They proposed to formalise

the transaction the applicant had sought to perform and requested the Court to strike out the application in accordance with Article 37 § 1 (c) of the Convention.

36. The applicant objected to the case being struck out and requested that the Court pursue its examination of the admissibility and merits of the case on the grounds that the declaration did not cover all of her complaints, and that no compensation had been offered.

37. The Court finds that the unilateral declaration does not afford satisfactory redress to the applicant in view of the fact that no compensation is offered to her for the violation of her rights and that, consequently, the Government failed to submit a statement offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, *a contrario*, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24 , ECHR 2001-VI; and *Van Houten v. the Netherlands* (striking out), no. 25149/03, §§ 34-37, ECHR 2005-IX).

38. This being so, the Court rejects the Government's request to strike the application out under Article 37 § 1 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

39. The applicant complained that she was unable to donate her property to her children and that the authorities refused to register her title in respect of the pavilion. She relied on Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> 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

40. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The applicant's inability to donate her property to her children

(a) Whether there was an interference with the applicant's right to the peaceful enjoyment of her possessions

41. The applicant claimed that there had been an interference with the peaceful enjoyment of her possessions. In particular, she was unlawfully prevented from dividing her property and transferring title to the relevant parts of it to her four children.

42. The Government did not make any submissions in this regard.

43. The Court reiterates that the essential object of Article 1 of Protocol No. 1 is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her possessions. However, by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention". The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, those positive obligations may require the State to take measures necessary to protect the right of property (see *Broniowski v. Poland* [GC], no. 31443/96, § 143, ECHR 2004-V and the cases cited therein).

44. According to the Court's case-law, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II).

45. In the present case, the applicant complained that the Armenian authorities, by refusing to formalise the division of her property and the transfer of ownership in respect of it to her children, interfered with the peaceful enjoyment of her possessions.

46. The Court considers that the prohibition on having her property divided and transferred to her children undoubtedly restricted the applicant's right to use her possessions. There was therefore an interference

with the applicant's right to property (see, *mutatis mutandis*, *Sporrong and Lönnroth*, cited above, § 60).

47. As to the nature of the interference, the Court notes that there was no deprivation of property in the present case but rather, as a result of the refusal of the authorities to formalise the transaction of donating her property to her children, the applicant's right to make use of her property freely was restricted. The interference did not amount to control of the use of property either since it did not pursue such an aim. The Court considers therefore that the applicant's complaint falls to be dealt with under the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Pialopoulos and Others v. Greece*, no. 37095/97, § 56, 15 February 2001).

(b) Whether the interference was justified

48. 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. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention. It follows that the issue whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary (see *Iatridis*, cited above, § 58). However, the Court has limited power to review compliance with domestic law since it is a matter which primarily lies within the competence of domestic courts (see *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 47, Series A no. 171-A).

49. In the present case, the Government acknowledged that the prohibition on dividing the applicant's property and donating it to her children was not compatible with the requirements of Article 1 of Protocol No. 1. and forbore from making any further submissions on the matter (see paragraph 35 above). In such circumstances, the Court considers that it does not need to examine the applicant's complaint concerning the limitation on her right to make use of her property by dividing and donating it to her children and concludes that there has been a violation of Article 1 of Protocol No. 1.

2. The refusal to register the applicant's title in respect of the pavilion

50. The Court notes that, as a result of the authorities' refusal to register the applicant's title in respect of the pavilion, she was inevitably prevented from performing any legal transactions in its respect. The Court notes, however, that the refusal to register the applicant's title did not as such affect day to day use and occupation of the pavilion.

51. The Court further notes that in the circumstances where the applicant sought to divide her property, including her land and the house on it, into four parts and donate it to her children, it can reasonably be presumed that the ultimate purpose of the registration of her pavilion located on the same plot of land was to be able to transfer equally the title to it together with her ownership rights in respect of the rest of the property.

52. Against this background, and in the light of the Court's conclusion that the prohibition on alienation of the applicant's property amounted to a violation of Article 1 of Protocol No. 1 to the Convention, the Court does not consider it necessary to examine whether the refusal to register the applicant's title in respect of the pavilion was compatible with the requirements of this provision.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

53. The applicant complained that the inability to donate her property to her children and the authorities' refusal to register her title in respect of the pavilion amounted also to a violation of Article 8 of the Convention which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

54. 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. The Court notes at the same time that, having regard to its conclusions under Article 1 of Protocol No. 1 to the Convention above, it does not find it necessary to examine separately the same complaints under Article 8.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed EUR 4,000 in respect of non-pecuniary damage she had suffered on account of helplessness caused by her inability to obtain restoration of her violated rights for a number of years.

57. The Government asked that the applicant's claim in respect of non-pecuniary damage be rejected.

58. As noted above, the Court does not consider that the division of the applicant's property and its transfer to her children would provide her with sufficient redress (see paragraph 37 above). It therefore considers that the applicant should in addition be entitled to compensation for non-pecuniary damage suffered as a result of the impossibility for a prolonged period of time to make use of her property freely, namely by donating it to her children. Ruling on an equitable basis, the Court awards the applicant EUR 3,000 in this respect.

B. Costs and expenses

59. The applicant also claimed a total of AMD 404,000 (approximately EUR 795) for costs and expenses, including AMD 34,000 (approximately EUR 67) for court fees and AMD 50,000 (approximately EUR 98) for transport costs and different administrative expenses, such as printing and photocopying incurred during the domestic proceedings, as well as AMD 300,000 (approximately EUR 590) for legal fees and AMD 20,000 (approximately EUR 40) for postal fees incurred before Court. As regards the legal fees of AMD 300,000 incurred before the Court, the applicant submitted that, given her poor financial situation, she had paid only AMD 50,000 to her lawyer, Mr Alumyan, and, in accordance with their written agreement, she was bound to pay him AMD 250,000 from the amounts awarded by the Court if it found in her favour.

60. The Government submitted that Mr Alumyan became involved in the case only from 5 July 2010 (the date of the agreement between him and the applicant) and that the applicant had actually paid him only AMD 50,000. As for the costs and expenses that the applicant claimed to have incurred before the domestic courts, the Government submitted that she had failed to produce any documentary evidence to show that these had

been actually incurred. Lastly, as regards the postal expenses of AMD 20,000, the Government pointed out that, according to the postal receipts provided by the applicant, she had actually paid AMD 16,680 (approximately EUR 33).

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In this respect, the Court notes that the applicant failed to submit any documentary proof substantiating her claims for costs and expenses incurred before the domestic courts. The Court, therefore, dismisses the applicant's claims in this respect.

62. As regards the remainder of the applicant's claim for costs and expenses, the Court notes that the applicant concluded an agreement with her representative concerning his fees which is comparable to a contingency fee agreement, an agreement whereby a lawyer's client agrees to pay the lawyer, in fees, a certain percentage of the sum, if any, awarded to the litigant by the court. Such agreements may show, if they are legally enforceable, that the sums claimed are actually payable by the applicant (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI; and *Kamasinski v. Austria*, 19 December 1989, § 115, Series A no. 168).

63. The applicant paid an initial amount of AMD 50,000 to her lawyer and a further AMD 250,000 was due in the event the Court found in her favour. The Court further notes that contingency agreements are enforceable under Armenian law. In particular, the Advocacy Act does not set out any limitations on the type of agreement an advocate may enter into with his client, such agreements being regulated by the general provisions of the Civil Code. The Court, therefore, recognises the lawfulness of the arrangement entered into between the applicant and her representative, Mr Alumyan (contrast with *Dudgeon v. the United Kingdom* (Article 50), 24 February 1983, § 22, Series A no. 59).

64. Regard being had to the documents in its possession and the above criteria, the Court awards the applicant in total the sum of EUR 630 for the costs of the proceedings before the Court.

C. Default interest

65. 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. *Rejects* the Government's request to strike the application out of the Court's list of cases;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 as regards the applicant's inability to donate her property to her children;

4. *Holds* that there is no need to examine separately the complaints under Article 8 of the Convention and the complaint under Article 1 of Protocol No. 1 as regards the refusal to register the applicant's pavilion;

5. *Holds*
   (a) that the respondent State is to pay the applicant, 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 Armenian drams at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 630 (six hundred and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 21 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President