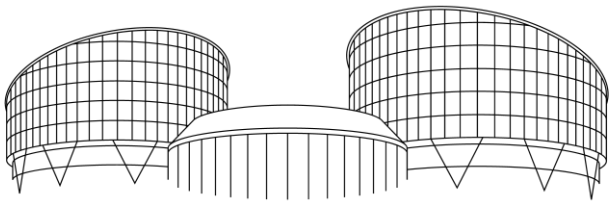

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TUNYAN AND OTHERS v. ARMENIA

(Application no. 22812/05)

JUDGMENT

STRASBOURG

9 October 2012

FINAL

11/02/2013

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

In the case of Tunyan and Others v. Armenia,

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

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 18 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 22812/05) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Armenian nationals, Ms Emma Tunyan, Mr Sashik Safyan, Mr Gevorg Safyan and Mr Mihran Safyan ("the applicants"), on 15 June 2005.

2. The applicants were represented by Mr V. Grigoryan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. On 20 June 2007 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1945, 1940, 1974 and 1976 respectively and live in Yerevan.

5. Ms Emma Tunyan (hereafter, the first applicant) owned a flat which measured 89.25 sq. m. and was situated at 9 Byuzand Street, Yerevan. The flat was in a house situated on a plot of land measuring 240 sq. m. leased by the first applicant. The applicants alleged that Mr Sashik Safyan,

Mr Gevorg Safyan and Mr Mihran Safyan (hereafter, the second, third and fourth applicants), the first applicant's husband and two sons, enjoyed a right of use in respect of this house, while the Government contested this allegation and claimed that they did not enjoy the right of use in respect of the house and simply had the right to live in it.

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

7. On 17 June 2004 the Government adopted Decree no. 909-N, contracting out the construction of one of the sections of Byuzand Street – which was to be renamed as the Main Avenue – to a private company, Glendale Hills CJSC.

8. On 28 July 2004 Glendale Hills CJSC and the Yerevan Mayor's Office signed an agreement which, *inter alia*, authorised the former to negotiate directly with the owners of the property subject to expropriation and, should such negotiations fail, to institute court proceedings on behalf of the State, seeking forced expropriation of such property.

9. On 25 August 2004 Glendale Hills CJSC informed the applicants that the flat and the leased plot of land had been valued by a licensed valuation organisation at USD 34,200 and offered the first applicant as the owner an equivalent sum in the national currency as compensation. An additional sum of USD 28,600 was offered to her as a financial incentive, if she agreed to sign an agreement and to hand over the property within the following five days. The other applicants were offered each USD 2,000 as compensation and USD 1,500 as a financial incentive.

10. It appears that the applicants did not accept the offer, not being satisfied with the amount of compensation offered.

11. On 23 September 2004 Glendale Hills CJSC instituted proceedings against the applicants on behalf of the State, seeking to oblige them to sign an agreement on the taking of their property for State needs and to evict them.

12. On 18 October 2004 the first applicant lodged a counter-claim in which she contested the constitutionality of Government Decree no. 1151-N. She submitted, *inter alia*, that this Decree contradicted Article 28 of the Constitution, according to which property could be expropriated only through the adoption of a law concerning the property in question. She further submitted that the Government was not authorised under the same Article to decide on the expropriation of property.

13. On 26 October 2004 the Kentron and Nork-Marash District Court of Yerevan granted the claim of Glendale Hills CJSC and dismissed the

counter-claim of the first applicant, ordering the applicants to sign the agreements offered and that they be evicted. The District Court stated, *inter alia*, that it was not competent to decide upon the constitutionality of Government Decree no. 1151-N.

14. On 9 November 2004 the applicants lodged an appeal.

15. On 1 March 2005 the Civil Court of Appeal granted the claim of Glendale Hills CJSC. The Court of Appeal further terminated the proceedings on the first applicant's counter-claim since it was not competent to decide on the constitutionality of government decrees. It also ordered that the applicants pay court fees in the amount of 4,000 and 10,000 Armenian drams (AMD).

16. On 14 March 2005 the applicants lodged an appeal on points of law. On 1 April 2005 they filed additional submissions to their appeal.

17. On 14 April 2005 the Court of Cassation dismissed the applicants' appeal.

18. On 29 April 2005 the bailiff instituted the enforcement proceedings and ordered the applicants to comply with the judgment. On 12 May 2005 the applicants, who had apparently refused to comply voluntarily with the judgment, were forcibly evicted from their home.

II. RELEVANT DOMESTIC LAW

19. For a summary of the relevant domestic provisions see the judgment in the case of *Minasyan and Semerjyan v. Armenia* (no. 27651/05, §§ 23-43, 23 June 2009).

THE LAW

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

20. The applicants complained that the deprivation of their possessions was in violation of the guarantees of Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in

accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. The Government's request to strike the application out

21. Following unsuccessful friendly settlement negotiations the Government informed the Court, by letter dated 9 December 2008, that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application, namely by offering to give to the applicants a redecorated apartment measuring 116 sq. m. in a building the construction works of which would be finished in 2010 and which was situated within the administrative boundaries of Kentron District of Yerevan, and also a sum of money. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

22. In an undated letter the applicants objected to the Government's declaration. They submitted that, firstly, their case raised issues which had not been determined by the Court in the past. Secondly, there was a disagreement between the parties regarding the facts of the case, namely the scope of their possessions. Thirdly, the redress proposed by the Government was inadequate and insufficient. It was not comparable to the size and location of the expropriated property and did not take into account the *de facto* deprivation of land. Furthermore, the proposal lacked details, such as a concrete address. It also involved a lengthy implementation period and an arbitrary calculation of the amount of rent.

23. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. It reiterates that, according to Article 38 § 2 of the Convention, friendly-settlement negotiations are confidential and that Rule 62 § 2 of the Rules of Court further stipulates that no written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in contentious proceedings (see *Meriakri v. Moldova* (striking out), no. 53487/99, § 28, 1 March 2005). The Court will therefore proceed on the basis of the Government's unilateral declaration and the parties' observations submitted outside the framework of friendly-settlement negotiations, and will disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement (see *Estate of Nitschke v. Sweden*, no. 6301/05, § 36, 27 September 2007).

24. The Court points out that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of

its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

25. It also notes that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

26. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; also *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03). It does not, however, consider it necessary to rule on the entirety of the parties' arguments on the matter for the following reason.

27. Turning to the nature of the proposed redress, the Court notes that the Government have proposed to provide the applicants with a new flat and a sum of money. It is, however, not convinced that this is an acceptable proposal, since Government have failed to provide sufficient details of the flat in question (for an identical situation, see *Yedigaryan v. Armenia* (dec.), no. 10446/05, § 35, 15 November 2011, and *Yeranosyan v. Armenia* (dec.), no. 3309/06, § 24, 15 November 2011). They did not specify its precise location and address, or provide any supporting documents (see, by contrast, *Gharibyan and Others v. Armenia* (dec.), no. 19940/05, § 22, 15 November 2011; *Ghasabyan and Others v. Armenia* (dec.), no. 23566/05, § 21, 15 November 2011; and *Baghdasaryan and Zarikyants v. Armenia* (dec.), no. 43242/05, § 21, 15 November 2011).

28. The Court therefore rejects the Government's request to strike the application out under Article 37 § 1 (c) of the Convention.

2. Victim status of the applicants Sashik Safyan, Gevorg Safyan and Mihran Safyan

29. The Government submitted that the applicants Sashik Safyan, Gevorg Safyan and Mihran Safyan could not claim to be victims of an alleged violation of Article 1 of Protocol No. 1 because they did not have any "possessions" within the meaning of that provision. In particular, the applicants Sashik Safyan, Gevorg Safyan and Mihran Safyan did not enjoy any property rights in respect of the house owned by the first applicants including the right of use of accommodation. The latter right, pursuant to Article 225 of the Civil Code, could arise only from the moment of State registration. However, there was no evidence to show that the applicants

Sashik Safyan, Gevorg Safyan and Mihran Safyan had such a right registered at the Real Estate Registry. Thus, the only right enjoyed by them was the right to live in the house in question, pursuant to Article 47 of the Family Code and Section 16 of the Children's Rights Act. This right, however, could not be considered as "possessions" within the meaning of Article 1 of Protocol No. 1.

30. The applicants Sashik Safyan, Gevorg Safyan and Mihran Safyan submitted that they enjoyed the right of use of accommodation in respect of the house owned by the first applicant. There was well-established case-law of the appeal and cassation courts in Armenia which, pursuant to Articles 54 and 120 of the Housing Code, recognised the right of use of accommodation based on three factors: (1) being a member of the family of the owner of the accommodation, (2) living in that accommodation, and (3) running a joint household with the owner. All these three factors existed in their case.

31. Admitting that their right of use of accommodation was not registered at the Real Estate Registry, the applicants submitted that that right was valid even without State registration since, pursuant to Section 41 of the Law on the State Registration of Rights in Respect of Property, rights of spouses, children and other dependants in respect of property, which were conferred on them by law, were effective without such registration. In any event, they were not able to register that right, even if they wanted to, because Government Decree no. 1151-N had placed limitations on the house in question which precluded any transactions from being registered at the Real Estate Registry.

32. The applicants lastly submitted that their enjoyment of the right of use of accommodation was also confirmed by the fact that the plaintiff sought to terminate their rights in respect of the house through payment of monetary compensation by resorting to courts and the courts awarded them such compensation.

33. The Court observes that the applicants Sashik Safyan, Gevorg Safyan and Mihran Safyan were engaged as plaintiffs in the court proceedings seeking to terminate the ownership right in respect of the flat. Furthermore, the domestic courts, when ordering such termination, explicitly referred to these applicants and awarded them compensation identical to that awarded to persons enjoying a right of use in other similar cases (see *Minasyan and Semerjyan*, cited above, § 16, and *Hovhannisyan and Shiroyan v. Armenia* (just satisfaction), no. 5065/06, § 14, 15 November 2011). Thus, the enjoyment by them of property rights, in this case the right of use of accommodation, was acknowledged by the domestic courts, which decided to award them compensation for the termination of that right. It follows that the Government's assertions to the contrary have no basis in the findings of the domestic courts. The Court reiterates in this respect that it has already found the right of use of accommodation to constitute a "possession" within the meaning of Article 1 of Protocol No. 1

(see *Minasyan and Semerjyan*, cited above, § 56). The Government's objection must therefore be dismissed.

3. Conclusion

34. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

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

36. The Government submitted that Article 28 of the Constitution was not applicable to the applicants' case.

37. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that the States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII). The Court further reiterates that the phrase "subject to the conditions provided for by law" requires in the first place the existence of and compliance with adequately accessible and sufficiently precise domestic legal provisions (see *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 110, Series A no. 102).

38. The Court notes that it has already examined identical complaints and arguments in another case against Armenia and concluded that the deprivation of property and the termination of the right of use were not carried out in compliance with "conditions provided for by law" (see *Minasyan and Semerjyan*, cited above, §§ 69-77). The Court does not see any reason to depart from that finding in the present case.

39. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

40. The applicants also raised a number of complaints under Articles 6 and 8 of the Convention.

41. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. In respect of pecuniary damage the first applicant claimed 4,401,440 euros (EUR) as the value of the expropriated property and lost revenue, while the remaining applicants each claimed EUR 6,930 as the value of their terminated right of use. They left the question of non-pecuniary damage to the Court's discretion.

44. The Government did not comment on these claims.

45. The Court notes that it has previously awarded pecuniary damages in an identical situation (see *Minasyan and Semerjyan v. Armenia* (just satisfaction), no. 27651/05, §§ 17-21, 7 June 2011), which it finds to be fully applicable to the present case. Using the same approach and making an assessment based on all the materials at its disposal, the Court estimates the pecuniary damage suffered at EUR 30,000 and decides to award this amount jointly to the applicants, while dismissing the remainder of their claim, including that for lost revenue which is of a speculative nature. It further decides to award each applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

46. The first applicant also claimed and AMD 14,000 for the costs and expenses incurred before the domestic courts, namely the court fee she had been obliged to pay.

47. The Government did not comment on this claim.

48. 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 the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 30 to the first applicant for costs and expenses in the domestic proceedings.

C. Default interest

49. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the deprivation of the applicants' property admissible under Article 1 of Protocol No. 1 and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros) to the applicants jointly, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 30 (thirty euros) to the applicant Emma Tunyan, plus any tax that may be chargeable to her, 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;

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

Done in English, and notified in writing on 9 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President