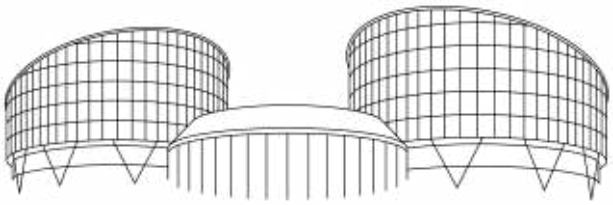

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF HOVHANNISYAN AND SHIROYAN v. ARMENIA

(Application no. 5065/06)

JUDGMENT
(*Just satisfaction*)

STRASBOURG

15 November 2011

FINAL

15/02/2012

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

In the case of Hovhannisyan and Shiroyan v. Armenia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 18 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 5065/06) 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 three Armenian nationals, Mr Hovhannes Hovhannisyan, Ms Astghik Hovhannisyan and Ms Diana Shiroyan ("the applicants"), on 17 January 2006.

2. In a judgment delivered on 20 July 2010 ("the principal judgment"), the Court held that deprivation of the applicants' possessions had not been compatible with the principle of lawfulness and that, consequently, there had been a violation of Article 1 of Protocol No. 1 (see *Hovhannisyan and Shiroyan v. Armenia*, no. 5065/06, §§ 40-47, 20 July 2010).

3. Under Article 41 of the Convention the applicants, who enjoyed a right of use in respect of the expropriated flat, each sought pecuniary damages of 7,560,000 Armenian drams (AMD) which, according to the applicable exchange rate, was equivalent to 16,666.30 euros (EUR). They also sought non-pecuniary damages of a total of EUR 30,000 and the applicant Hovhannes Hovhannisyan sought costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within three months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (ibid., § 57 and point 4 (a) and (b) of the operative provisions).

5. The applicants and the Government each filed observations.

THE LAW

6. 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

1. Pecuniary damage

(a) The parties' submissions

7. The applicants maintained their claim. They alleged that they were unable to obtain any information from public authorities necessary for the effective presentation of their claims for pecuniary damage, because of public officials having economic interests in the construction projects and therefore blocking any access to the relevant official information, namely the information concerning real estate prices in the centre of Yerevan.

8. In view of the above, the applicants argued that the value of their right of use was to be calculated using the method of capitalisation of income and by applying the formula prescribed by the amended Article 225 of the Civil Code, which – following the circumstances of the present case – introduced a new method of calculation of the amount of compensation for termination of the right of use (see *Minasyan and Semerjyan v. Armenia*, no. 27651/05, § 40, 23 June 2009). Based on such a calculation, the applicants each claimed AMD 7,560,000 in respect of pecuniary damage which, according to the applicable exchange rate, was equivalent to EUR 16,666.30.

9. The Government claimed that the formula suggested by the applicants for the calculation of pecuniary damage was not applicable to their case, because the amendments to Article 225 of the Civil Code, which introduced the formula in question, entered into force only on 26 November 2005, that is after the circumstances of the present case. The amount of possible pecuniary damage was to be calculated based on the characteristics of the flat and the type of rights enjoyed by the applicants.

(b) The Court's assessment

10. The Court has held on a number of occasions that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 32,

ECHR 2000-XI). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the violation allows of *restitutio in integrum* it is the duty of the State held liable to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, however, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I).

11. In the present case, a violation of Article 1 of Protocol No. 1 was found on the ground that the applicants' right of use in respect of the flat was terminated with reliance on legal rules which were not applicable to their case. Such termination was found to be arbitrary and unlawful (see *Hovhannisyan and Shiroyan*, cited above, § 45). The Court notes that no *restitution in integrum* is possible due to the demolition of the flat. Consequently, it considers that an award for pecuniary damage must be made.

12. The Court agrees with the Government that the calculation of the pecuniary damage should not be based on the formula prescribed by the amended Article 225 of the Civil Code, since these provisions were not in force at the material time. According to Article 225 of the Civil Code as in force at the material time, the value of the right of use was equivalent to the market value of a corresponding share in a flat in whose respect such right was enjoyed (see also *Minasyan and Semerjyan v. Armenia* (just satisfaction), no. 27651/05, § 20, 7 June 2011).

13. The applicants in the present case jointly enjoyed a right of use in respect of 33.8 sq. m of the expropriated flat which in total measured 66.8 sq. m. No compensation, however, was paid to them for their share in the flat, but only special financial assistance as prescribed by the relevant governmental decree (see *Hovhannisyan and Shiroyan*, cited above, §§ 9, 14 and 26-28). At the same time, since the expropriated flat was demolished and no longer exists, it is impossible to calculate precisely the value of the applicants' share. Therefore, the assessment of the pecuniary damage will have to be made on an equitable basis. Having regard to the relevant principles established in its case-law, the Court considers that the most appropriate and fair solution would be to award the applicants the probable value of their share in the flat at the material time converted to current value to offset the effects of inflation.

14. The Court notes that it transpires from the contract signed on 16 June 2005 between K.H., the applicants' family member who was the

owner of the flat, and the State, according to which K.H. agreed to cede the flat to the State in exchange for another flat, that the flat was valued at the material time at AMD 10,285,923. Bearing in mind this information and making an estimate based on all the materials at its disposal, the Court assesses the amount of the pecuniary damage at EUR 12,500. The Court considers that this amount must be awarded to the applicants jointly.

2. Non-pecuniary damage

15. The applicants further claimed EUR 10,000 each in respect of non-pecuniary damage, alleging that they had suffered feelings of frustration and helplessness as a result of unlawful expropriation and becoming homeless.

16. The Government claimed that the applicants had failed to prove that they had suffered non-pecuniary damage and that there was a causal link between the violation found and the alleged non-pecuniary damage.

17. The Court considers that the feelings of powerlessness and frustration arising from the unlawful deprivation of their possessions has caused the applicants non-pecuniary damage that should be compensated in an appropriate manner. Ruling on an equitable basis, as required by Article 41 of the Convention, it decides to award EUR 2,000 to each of the applicants under this head, or EUR 6,000 in total.

B. Costs and expenses

18. The applicant Hovhannes Hovhannisyan also claimed EUR 100 in respect of postal costs.

19. The Government argued that the postal receipt from DHL submitted by the applicnts did not fully reflect this amount. Furthermore, there was no need for them to use such an expensive postal service.

20. The Court notes that the applicant Hovhannes Hovhannisyan submitted a postal receipt for the amount of AMD 23,525 which makes about EUR 45. It therefore decides to award this amount to the applicant Hovhannes Hovhannisyan.

C. Default interest

21. The Court considers it appropriate that the default interest 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. *Holds*

(a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,500 (twelve thousand five hundred euros) and EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage respectively, and the applicant Hovhannes Hovhannisyan, within the same time-limit, EUR 45 (forty-five euros), plus any tax that may be chargeable, in respect of costs and expenses, to be converted into Armenian drams at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 15 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President