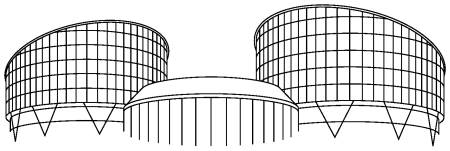

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF OSMANYAN AND AMIRAGHYAN v. ARMENIA

(Application no. 71306/11)

JUDGMENT

STRASBOURG

11 October 2018

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 Osmanyan and Amiraghyan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Krzysztof Wojtyczek,
Ksenija Turković,
Armen Harutyunyan,
Pauliine Koskelo,
Jovan Ilievski, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 18 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 71306/11) 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 five Armenian nationals, Mr Suren Osmanyan, Mr Serob Osmanyan, Mr Bakur Osmanyan, Ms Mane Osmanyan and Mrs Donara Amiraghyan ("the applicants"), on 11 November 2011.

2. The applicants were represented by Mr K. Tumanyan, a lawyer practising in Vanadzor. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicants alleged, in particular, that the deprivation of their property did not satisfy the requirements of Article 1 of Protocol No. 1 to the Convention.

4. On 18 March 2014 the complaint concerning the expropriation of the applicants' property was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Suren Osmanyan, Serob Osmanyan, Bakur Osmanyan, Mane Osmanyan and Donara Amiraghyan were born in 1935, 1961, 1988, 1990 and 1966 respectively and live in Teghout village.

6. The applicants are a family of five, making their living from agriculture. They jointly owned a plot of arable land in the village measuring 0.383 ha.

7. In the 1970s a copper-molybdenum deposit ("Teghout") was discovered about 4 and 6 km from the villages of Teghout and Shnogh respectively, in the Lori Region.

8. In 2001 a private company, Armenian Copper Programme CJSC, was granted a mining licence for the exploitation of the Teghout copper-molybdenum deposit for a period of twenty-five years.

9. On 1 November 2007 the Government adopted Decree no. 1279-N approving the expropriation zones of territories situated within the administrative boundaries of the rural communities of Shnogh and Teghout in the Lori Region to be taken for State needs, and changing the category of land use. According to the Decree, Armenian Copper Programme CJSC or Teghout CJSC, founded by the former for the implementation of the Teghout copper-molybdenum deposit exploitation project, were to acquire the units of land listed in its annexes. The plot of land belonging to the applicants was listed among the units of land falling within these expropriation zones.

10. On 25 March 2008 Oliver Group LLC, a licensed evaluation company hired by Teghout CJSC, delivered an evaluation report of the applicants' plot of land. According to the report, the cadastral value of the applicants' plot of land was AMD 250,865 (approximately EUR 545). By means of calculations based on comparative and income capitalisation methods, the market value of the applicants' plot of land was estimated at AMD 188,000 (approximately EUR 409).

11. On an unspecified date Teghout CJSC addressed a letter to the applicants containing an offer to buy their plot of land for AMD 188,000 plus an additional 15% as required by law, making the final offer AMD 216,200 (approximately EUR 470).

12. The applicants did not reply to the offer, not being satisfied with the amount of compensation. They claimed that they were unable to obtain an evaluation of their property by another company since no other evaluation company was willing to make an independent evaluation of the market value of their land.

13. On 12 May 2008 Teghout CJSC lodged a claim with the Lori Regional Court ("the Regional Court") against the applicants and L., the

first applicant's late wife, seeking to oblige them to sign the agreement on the taking of their property for State needs. The company based its claim, *inter alia*, on the evaluation report prepared by Oliver Group LLC.

14. In the course of the proceedings Teghout CJSC submitted a corrected version of the evaluation report on the applicants' property stating that Oliver Group LLC had made certain corrections as a result of which the market value of the land was estimated at AMD 194,000 (approximately EUR 422). The final amount of compensation, together with the additional 15% required by the law, would thus be equal to AMD 223,100 (approximately EUR 485). The remainder of the data contained in the original report had not been changed.

15. The applicants argued before the Regional Court that the market value of their land had been underestimated and that the court should order a forensic expert examination to determine the real market value of their property.

16. On 6 October 2008 the Regional Court granted Teghout CJSC's claim, awarding L. and the applicants a total of AMD 223,100 in compensation.

17. The applicants lodged an appeal complaining, *inter alia*, that the third applicant had not been duly notified about the proceedings and that L. had died before the proceedings before the Regional Court had started. They further argued that they had not been duly notified about the dates and times of the rescheduled hearings.

18. On 27 February 2009 the Civil Court of Appeal quashed the Regional Court's judgment and remitted the case for a fresh examination.

19. On 2 June 2009 the Regional Court granted Teghout CJSC's claim finding, *inter alia*, that the evaluation reports prepared by Oliver Group LLC should be considered lawful and acceptable evidence to determine the market value of the applicants' property to be taken for State needs and that the applicants' request to order a forensic expert examination was groundless. The Regional Court stated that the first applicant, as L.'s successor, should be awarded her share in the amount of compensation and awarded the applicants a total of AMD 223,100 in equal shares as compensation.

20. The applicants lodged an appeal claiming, *inter alia*, that the amount of compensation was not adequate and that no account had been taken of their fruit trees and their profitability. They argued that the Regional Court had accepted the reports submitted by their opponent as established proof of the market value of their property. Also, they argued that the Regional Court should have exercised its statutory discretion to order an expert examination since such a necessity had arisen in the course of the proceedings and they had no possibility to provide an alternative evaluation themselves.

21. On 31 July 2009 the Civil Court of Appeal quashed the Regional Court's judgment, stating that it should have granted the applicants' request

by ordering a forensic expert examination to determine the market value of the property. The case was remitted to the Regional Court.

22. On 27 January 2010 the Regional Court ordered a forensic expert examination to determine the market value of the applicants' plot of land, including that of immovable property or other improvements, if there were any.

23. On 12 August 2010 expert G. of the "Expertise Centre", a State nonprofit organisation, delivered a report according to which the market value of the property was estimated to be AMD 230,000 (approximately EUR 500). It was stated in the report that the applicants' plot of land was entirely covered with grass, did not have any water supply and was used to provide fodder. There were four peach trees on the land in question. Relevant photographs of the applicants' plot of land were attached to the report.

24. On 1 November 2010 the Regional Court ordered an additional forensic expert examination. The expert was requested to determine whether there were any improvements on the applicants' plot of land and, if so, to describe them and to establish the market value of the land together with the value of the improvements, if there were any.

25. On 17 December 2010 expert A. of "National Bureau of Expertise", a State nonprofit organisation, delivered his report which estimated the market value of the applicants' plot of land at AMD 209,100 (approximately EUR 450). The report confirmed the description of the applicants' plot of land contained in the previous expert report. In addition, it was stated that in the expert's opinion that the four fruit trees on the land could not have any bearing on the determination of its market value. The report also stated that the first expert report and the evaluation report by Oliver Group CJSC had produced quite realistic results.

26. On 21 April 2011 the Regional Court granted Teghout CJSC's claim. It relied on the corrected evaluation report prepared by Oliver Group CJSC and two forensic expert reports. The Regional Court granted the applicants AMD 264,500 (approximately EUR 575) by taking the highest market value of the three evaluations at its disposal and adding to that amount the additional 15% as required by law.

27. The applicants lodged an appeal arguing, *inter alia*, that the second forensic examination report was not credible since the expert had failed to specify the sources of information he had used to reach his conclusions and moreover no account had been taken of the number of the applicants' trees and their value. They further argued that they had filed an application with the Regional Court seeking to exclude this piece of evidence and assign an additional forensic examination, but their application was dismissed.

28. On 7 July 2011 the Civil Court of Appeal upheld the Regional Court's judgment finding that the amount of compensation had been correctly determined based on the existing evidence. As regards the

applicants' arguments concerning the fruit trees, the Civil Court of Appeal stated that both experts appointed by the Regional Court had recorded that there were only four fruit trees on the plot of land while expert A. had stated in his report that the trees in question could not have a significant bearing on the market value of the land.

29. The applicants lodged an appeal on points of law. They raised similar complaints to those raised before the Court of Appeal.

30. On 31 August 2011 the Court of Cassation declared the applicants' cassation appeal inadmissible for lack of merit.

II. RELEVANT DOMESTIC LAW

31. According to Article 31 of the Constitution, everyone shall have the right to dispose of, use, manage and bequeath his property in the way he sees fit. No one can be deprived of his property, save by a court in cases prescribed by law. Property can be expropriated for the needs of society and the State only in exceptional cases of paramount public interest, in a procedure prescribed by law and with prior equivalent compensation.

A. The Law on Alienation of Property for the needs of Society and the State (adopted on 27 November 2006 and in force from 30 December 2006)

32. According to Article 3 § 1, the constitutional basis for alienation of property for the needs of society and the State is the prevailing public interest.

33. According to Article 3 § 2, the constitutional requirements for alienation of property for the needs of society and the State are the following:

(a) alienation must be carried out in accordance with a procedure prescribed by the law,

(b) prior adequate compensation should be provided for property subject to alienation.

34. According to Article 4 § 1, the principles for the determination of the public interest for alienation of property for the needs of society and the State are the following:

(a) the public interest must prevail over the interests of the owner of property subject to alienation;

(b) the effective implementation of the public interest cannot be ensured without alienation of the given property;

(c) taking into account the public interest, the alienation of property should not cause unjustified damage to the owner;

(d) the public interest is recognised by a governmental decree;

(e) the issue of existence of a public interest may be subject to judicial review.

35. According to Article 4 § 2, the prevailing public interest may pursue, *inter alia*, the implementation of mining projects having important State or community significance. The aim of securing additional income for the State or community budget is not by itself a prevailing public interest.

36. According to Article 11 § 1, adequate compensation should be paid to the owner of property subject to alienation. The market value of the property plus an additional 15% is considered to be an adequate amount of compensation.

37. According to Article 11 § 3 the determination of the market value of real estate and property rights in respect of real estate is carried out in accordance with the procedure set out by the Law on Real Estate Evaluation Activity.

B. The Law on Real Estate Evaluation Activity (as in force at the material time)

38. According to Article 3, real estate evaluation activity is regulated by the Civil Code, the Law on Real Estate Evaluation Activity, the real estate evaluation standard and other legal acts, as well as international treaties.

39. According to Article 4, which sets out a list of definitions used in this law, real estate evaluation is the determination of the market value of real estate in accordance with this law, the evaluation standard of real estate in Armenia and other legal acts on a paid basis. The real estate evaluation standard is a set of rules and instructions adopted by the Government which regulate real estate evaluation activity. A real estate evaluator is a natural person who has obtained a real estate evaluator's licence from the relevant authority.

40. The real estate evaluation standard is adopted by the Government and is mandatory for real estate evaluators. The real estate evaluation standard should include, *inter alia*, the methods of real estate evaluation (Article 7 §§ 1 and 2).

41. Article 8 provides that evaluation is obligatory in case of alienation of immovable property for State or community needs.

42. According to Article 15 § 1 (1) evaluators have the right to use independent methods of real estate evaluation in compliance with the real estate evaluation standard.

C. Government Decree No. 1279-N of 1 November 2007 approving the expropriation zones of certain territories situated within the administrative boundaries of rural communities of Shnogh and Teghout in the Lori Region to be taken for State needs and changing the category of land use (ՀՀ Կառավարության 2007 թ. նոյեմբերի 1-ի թիվ 1279-Ն որոշումը Հայաստանի Հանրապետության Լոռու մարզի Շնողի և Թեղուտի գյուղական համայնքների վարչական սահմաններում որոշ տարածքներում բացառիկ՝ գերակա հանրային շահ ճանաչելու և հողերի նպատակային նշանակությունը փոփոխելու մասին)

43. For the purpose of the implementation of the Teghout copper-molybdenum deposit exploitation project, and in the perspective of building and operating a mining plant, the Government decided to approve the expropriation zones of agricultural land situated within the administrative boundaries of the rural communities of Shnogh and Teghout in the Lori Region to be taken for State needs, with a total area of 81.483 ha. According to the Decree, the public interest in the development of the economy and infrastructure and the interest in higher levels of production and export prevailed over the private interests of the proprietors.

D. Government Decree No. 1746-N of 24 December 2003 approving the procedure for cadastral value estimation of Republic of Armenia inhabited locality lands, their placement zoning coefficients and borders (ՀՀ Կառավարության 2003 թ. դեկտեմբերի 1-ի թիվ 1746-Ն որոշումը Հայաստանի Հանրապետության բնակավայրերի հողերի կադաստրային գնահատման կարգը, տարածագնահատման գոտիվելու վայրի գոտիականության գործակիցները և սահմանները հաստատելու մասին)

44. Annexes 1 and 2 of the Decree set out the coefficients for cadastral value estimation of lands, in accordance with their respective zones. Teghout village is included in zone 14 with a coefficient of 0.037. According to Article 2 (a), the calculation basis for one square metre of inhabited locality land is AMD 60,000. Article 2 (b) provides that the coefficients set out in Annexes 1 and 2 are not applicable to the determination of the cadastral value of agricultural lands.

THE LAW

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

45. The applicants complained that they were deprived of their property in violation of the requirements of Article 1 of Protocol No. 1 to the Convention, 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

46. 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

1. The parties' arguments

47. The applicants submitted that their expropriated land was their main source of income. They argued that the deprivation of their property did not satisfy the requirement of lawfulness, did not pursue any public interest and that the amount of compensation awarded was inadequate. As regards the requirement of lawfulness, they argued that the law is not sufficiently foreseeable in that it does not specify the criteria for determining the market value of property to be taken for State needs. The applicants denied that the expropriation of their land had been carried out on "public interest" grounds. They argued that it was manifestly unreasonable in the present case to rely on a "public interest" when the measure had an exclusively commercial purpose, taking into account that the mining project was being implemented by a private company which did not have any State participation. The applicants further argued that the evaluation of the market value of their land was done based on the comparative method which could not adequately reflect its true market value. Moreover, the sum that they had received in compensation was much lower than the cadastral value of the

expropriated land at the time the expropriation procedure was initiated and was manifestly inadequate in relation to the actual value of the land in question. They referred to Government Decree No. 746 of 29 December 2003 according to which the cadastral value of land in the same zone as theirs amounted to AMD 222 per square metre.

48. The Government submitted that the expropriation of the applicants' property had been in accordance with the law. It was based on the Law on Alienation of Property for the needs of Society and the State adopted on 27 November 2006 which was both accessible to the applicants at the time of the expropriation and foreseeable in its consequences. As regards, in particular, the issue of evaluation of property to be taken for State needs, the mentioned law makes reference to another legal act, namely the Law on Real Estate Evaluation Activity, which sets out the relevant procedure. The Government argued that the impugned expropriation had been "in the public interest". Its main aim had been to ensure the development of the economy and infrastructure in the region, as stated in Government Decree No. 1279-N of 1 November 2007. The Government lastly submitted that the applicants were eventually awarded AMD 264,500 in compensation, which was more than the cadastral value of their land at the time of expropriation.

2. The Court's assessment

49. In the present case, it is not in dispute that there has been a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1. The Court must therefore ascertain whether the impugned deprivation was justified under that provision.

50. The Court reiterates that to be compatible with Article 1 of Protocol No. 1, an expropriation measure must fulfil three conditions: it must be carried out "subject to the conditions provided for by law", which rules out any arbitrary action on the part of the national authorities, must be "in the public interest", and must strike a fair balance between the owner's rights and the interests of the community (see, among other authorities, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 94, 25 October 2012). The Court will thus proceed to examine whether those three conditions have been met in the present case.

(a) "Subject to the conditions provided for by law"

51. An essential condition for an interference with a right protected by Article 1 of Protocol No. 1 to be deemed compatible with this provision is that it should be lawful. The rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II, ECHR 2016; *Vistiņš and Perepjolkins*, cited above, § 95, and *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 112).

52. However, the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against arbitrariness. Thus, in addition to being in accordance with the domestic law of the Contracting State, including its Constitution, the legal norms upon which the deprivation of property is based should be sufficiently accessible, precise and foreseeable in their application (see *Vistiņš and Perepjolkins*, cited above, §§ 96-97 and the cases cited therein).

53. A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable citizens to regulate their conduct; they must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Such consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed. In particular, a rule is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities (see, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 141-143, ECHR 2012 with further references).

54. In the instant case it is not in dispute that the expropriation of the applicants' property was carried out on the basis of the Law of 27 November 2006 on Alienation of Property for the needs of Society and the State (the Law).

55. The Court notes that the applicants' property was expropriated more than one year after the enactment of the Law, which is of general application and was not specifically intended by the legislature to apply to the applicants' situation. The Law was therefore accessible to the applicants. In fact, the applicants themselves did not argue that the relevant legal provisions based on which they were deprived of their property were not accessible to them but claimed that the Law was not foreseeable as to its effects as regards the manner of determination of the market value of land subject to expropriation.

56. The Court observes that Article 11 § 3 of the Law, which concerns the issue of determination of the market value of real estate to be taken for the needs of society and the State, refers to the Law on Real Estate Evaluation Activity (see paragraph 37 above). Article 7 of the latter law in its turn provides that the methods for real estate evaluation are set out in the real estate evaluation standard which is adopted by the Government and is mandatory for real estate evaluators (see paragraphs 38 and 40 above). Furthermore, according to Article 4 of the same law, real estate evaluation is a professional activity which is carried out by licensed real estate evaluators

in accordance with the rules and instructions set out in the real estate evaluation standard (see paragraph 39 above).

57 The Court does not share the applicants' view that the Law was not sufficiently foreseeable in its effects. In particular, the Law, which provides the general legal framework for the procedure of taking property for the needs of society and the State, cannot be expected to regulate in such detail particular instances of deprivation of property as to specify the method of determination of the market price for each type of property subject to evaluation for expropriation purposes. Moreover, taking into account that real estate evaluation is a professional licensed activity, it does not seem unreasonable that a certain choice of methods to be used during evaluation is left to the evaluator who chooses an appropriate method in a particular situation depending on the specificities of the real estate in question.

58. The Court is satisfied that in the circumstances the above-mentioned legal provisions were clear enough to enable the applicants to foresee in general terms the manner in which the market value of their property would be evaluated. The applicants could then challenge the report prepared by the evaluator hired by the acquirer of their property, of which possibility they successfully availed themselves (see paragraphs 22 and 24 above). The Court finds therefore that the applicants were afforded sufficient guarantees against arbitrariness.

59. Consequently, the impugned expropriation may be regarded as having been carried out "subject to the conditions provided for by law".

(b) "In the public interest"

60. The Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation. Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Beyeler v. Italy* [GC], no. 33202/96, § 112, ECHR 2000-I, and *Vistiņš and Perepjolkins*, cited above, § 106).

61. The Government argued that the State needed to expropriate the applicants' land for the development of the economy and infrastructure as a

result of the implementation of the Teghout copper-molybdenum deposit exploitation project. The Court has no convincing evidence on which to conclude that these reasons were manifestly devoid of any reasonable basis (contrast *Tkachevy v. Russia*, no. 35430/05, § 50, 14 February 2012).

(c) Proportionality of the impugned measure

62. Article 1 of Protocol No. 1 requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, §§ 81-94, ECHR 2005-VI). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Stefanetti and Others v. Italy*, nos. 21838/10 and 7 others, § 66, 15 April 2014).

63. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants (see the recapitulation of the relevant principles in *Vistiņš and Perepjolkins*, cited above, §§ 110-114).

64. The applicants argued that the compensation received was significantly lower than the cadastral value of their land. The Court observes that the cadastral value of the applicants' plot of land was indicated at AMD 250,865 in the initial and corrected evaluation reports (see paragraphs 10 and 14 above) that is AMD 65.50 per sq. m, as opposed to the AMD 222 per sq. m, as claimed by the applicants (see paragraph 47 above).

65. The Court also observes that at no point during the domestic proceedings or in the proceedings before the Court did the applicants dispute the accuracy of the amount of the cadastral value of their land indicated in the above evaluation reports. Neither did the applicants submit any evidence before the Court, such as for instance receipts of their payments in respect of land tax which would substantiate that the cadastral value of their land was indeed AMD 222 per sq. m. Insofar as the applicants claim that the cadastral value of land in the same zone as theirs amounted to AMD 222 per sq. m., it should be noted that Government Decree No. 1746-N of 24 December 2003, which sets out the coefficients used for calculation of cadastral value of land and indeed lists the applicants' village within the zone, the coefficient of which corresponds to the amount per square metre claimed by the applicants, explicitly states that this decree is not applicable to the determination of cadastral value of agricultural lands (see paragraph 44 above).

66. The Court notes that the applicants' property was first evaluated by the evaluating company hired by Teghout CJSC in its capacity as the acquirer of the property and, subsequently, by forensic experts based on court orders (see paragraphs 10, 14, 22, 23, 24 and 25 above). The Court considers that, on the basis of the material before it, there are no elements

sufficiently demonstrating that the market value of the applicants' land was grossly underestimated.

67. That said, the Court observes that, having used the comparative method of evaluation of real estate, the experts determined the market value of the applicants' plot of land in comparison with the sale prices of other plots of land in the same expropriation zone. The Court is mindful of its above finding that the relevant provisions of the Law were sufficiently foreseeable in that a professional expert should legitimately have the freedom of choice of the appropriate real estate evaluation method (see paragraph 58 above). It should be noted however that in a situation where the market value of the applicants' land was determined on the basis of the sale prices of plots of land within the same area, it cannot be excluded that the applicants would not be able to acquire or would at least experience serious difficulty in finding equivalent land in another area not subject to expropriation with the amount of compensation received.

68. Furthermore, the applicants continuously expressed their disagreement with the evaluation reports prepared upon the order of Teghout CJSC as well as with the reports delivered by the court-appointed experts on the ground that no account had been taken of their fruit trees and their profitability. It should be noted in this respect that both experts appointed by the court attached to their respective reports photographs of the applicants' plot of land which showed that they had indeed four fruit trees. In their opinion, however, the four trees in question could not have affected significantly the market value of the land (see paragraph 28 above).

69. Without prejudice to the relevant provisions of the Law and the margin of appreciation of the State in these matters, the Court considers that there may be situations where compensation representing the market price of the real estate in question even with the addition of the statutory surplus, would not constitute adequate compensation for deprivation of property. In the Court's opinion, such a situation may arise in particular if the property the person was deprived of constituted his main, if not only source of income and the offered compensation did not reflect that loss (see *Lallement v. France*, no. 46044/99, § 18, 11 April 2002).

70. In the present case the applicants submitted that as a family unit they had depended economically on the land in question. This argument has not been refuted by the respondent Government (see paragraphs 47-48 above). It is to be noted that this particular aspect, namely that in consequence of the expropriation the applicants had lost their main source of income, was not taken into account by the domestic courts in their decisions on the amount of the compensation due. The courts decided that, despite the circumstances, the applicants should be provided with compensation which was determined in relation to the prices of real estate situated in the area subject to expropriation. They did not address the issue whether the compensation granted would cover the applicants' actual loss involved in deprivation of

means of subsistence or was at least sufficient for them to acquire equivalent land within the area in which they lived.

71. In view of the foregoing, the Court finds that the applicants had to bear an excessive individual burden. Accordingly, the impugned expropriation was in violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicants claimed 22,190 euros (EUR) in respect of pecuniary damage. According to the applicants, the claimed amount reflected the sale and rental prices of land within the same community in the same period. They took 3,000 Armenian Drams (AMD) per square metre of land as a basis for calculation. The applicants further claimed EUR 5,000 in respect of non-pecuniary damage.

74. The Government submitted that the overall manner of calculation of the claimed amount was unclear. They therefore urged the Court to reject the applicant's claims. The Government further submitted that the applicants' claim in respect of non-pecuniary damage was excessive.

75. Given the nature of the violation found (see paragraphs 70 and 71 above), the Court finds that the applicants undoubtedly suffered some pecuniary and non-pecuniary damage (see, mutatis mutandis, *Moskal v. Poland*, no. 10373/05, § 105, 15 September 2009). In the particular circumstances of the present case, making an assessment on an equitable basis, as is required by Article 41 of the Convention, the Court awards the applicants EUR 10,000 to cover all heads of damage.

B. Costs and expenses

76. The applicants also claimed EUR 2,000 for legal costs incurred before the domestic courts and the Court.

77. The Government contested this claim.

78. 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, the Court finds it appropriate to award the legal costs claimed in their entirety.

C. Default interest

79. 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 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants, 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 2,000 (two thousand 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.

Done in English, and notified in writing on 11 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President