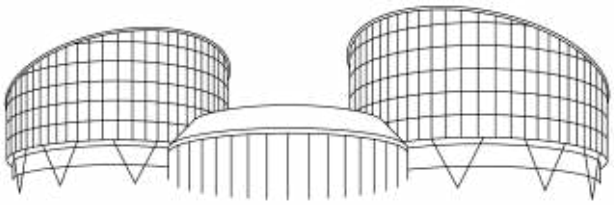

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 43334/05
by Hayk PAPYAN and Others
against Armenia

The European Court of Human Rights (Third Section), sitting on 29 June 2010 as a Chamber composed of:

Josep Casadevall, *President*,
Elisabet Fura,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 17 November 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Hayk Papyan, Mr Samvel Papyan, Ms Satenik Davtyan and Ms Lilit Papyan, are Armenian nationals who were born in 1971, 1942, 1949 and 1978 respectively and live in Yerevan. They were represented before the Court by Mr T. Atanesyan, 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.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. The applicants are a family who resided in a house situated at 11 Byuzand Street, Yerevan, which had allegedly belonged to their family since 1926. It appears that the house in question was situated on public land and had been built without permission.

4. It appears that in 1995 and 1997 the applicants Hayk Papyan and Samvel Papyan (hereafter, the first and the second applicant respectively) applied to the relevant public authority to have the house privatised in the framework of the privatisation scheme. According to the applicants, no decision was taken on their applications.

5. 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.

6. On 28 October and 21 November 2003 the first applicant applied to the Real Estate Registry, seeking to have his ownership right registered in respect of the house.

7. By letters of 30 October and 25 November 2003 the Real Estate Registry refused the first applicant's request.

8. On 3 December 2003 the first applicant applied to Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*), seeking to establish a fact of legal significance, namely to have his ownership in respect of the house recognised by virtue of adverse possession. He submitted, in particular, that he had been using the house as his own property since 1989.

9. On 17 June 2004 the Government decided to contract out the construction of one of the sections of Byuzand Street – which was to be renamed Main Avenue – to a private company, Glendale Hills CJSC.

10. 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.

11. By a letter of 18 August 2004 Glendale Hills CJSC informed the applicant Satenik Davtyan (hereafter, the third applicant) that the house in question was situated within the expropriation zone of the Main Avenue area and was to be taken for State needs. The third applicant was offered 2,000 United States dollars (USD) as financial assistance payable under the relevant governmental decree to registered persons, since the house was an unauthorised construction and she was only registered in it.

12. It appears that a similar offer was made to the other applicants. It further appears that none of the applicants responded to the offer, not being satisfied with the amount of compensation proposed.

13. On 27 September 2004 Glendale Hills CJSC instituted proceedings on behalf of the State against the applicants, seeking to oblige them to accept the offer and to have them evicted, with reference to Government Decree No. 1151-N.

14. On 3 March 2005 the Kentron and Nork-Marash District Court of Yerevan examined jointly the first applicant's application of 3 December 2003 and the claim of Glendale Hills CJSC. The court decided to grant the latter, finding that the house was situated in an expropriation zone as identified by the Government and was to be taken for State needs. The court awarded each applicant compensation payable to persons registered in unauthorised constructions, namely USD 2,000. The court further decided to dismiss the first applicant's application as unsubstantiated.

15. On 18 March 2005 the first applicant lodged an appeal. In his appeal, he argued that the court, in dismissing his application, had incorrectly interpreted various provisions of the Civil Code, the Housing Code and the Land Code. In support of his arguments the first applicant relied on evidence which allegedly substantiated his ownership claim in respect of the house. He further argued that, even if his ownership was not formally recognised, the amount of compensation awarded to him was inadequate. He finally claimed that as a user of the expropriated property he was entitled under the law to receive other property in its place.

16. On 14 April 2005 the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) granted the claim of Glendale Hills CJSC and dismissed the first applicant's application on the same grounds as the District Court.

17. On 29 April 2005 the first applicant lodged an appeal on points of law. In his appeal, he argued that the Court of Appeal's judgment was unreasoned and was not based on the evidence in the case. The Court of Appeal had ignored and incorrectly applied various provisions of the Civil Code and the Housing Code, and had failed to establish correctly the facts. He further argued that, regardless of the formal status of the property in question, he should have received adequate compensation or a plot of land or another flat instead. He finally claimed that the house was ownerless and

the court should have recognised his ownership in its respect by virtue of adverse possession.

18. On 27 May 2005 the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) dismissed the first applicant's appeal.

B. 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).

COMPLAINTS

20. The applicants complained under Article 1 of Protocol No. 1 that the deprivation of their property was not prescribed by law. In particular, their property was expropriated on the basis of a governmental decree in violation of Article 28 of the Constitution, as interpreted by the Constitutional Court, which required that any deprivation of property be based on a statute. Furthermore, there was no public interest in the deprivation of their property.

21. The applicants complained under Article 6 of the Convention that the Kentron and Nork-Marash District Court of Yerevan was not independent and impartial. In particular the court, ignoring the two-months time-limit imposed by the law, deliberately delayed the examination of the first applicant's application of 3 December 2003 for about fifteen months in order to examine it jointly with the claim of Glendale Hills CJSC. Furthermore, the court decided to dismiss the first applicant's application despite the fact that the same court had previously granted an almost identical application lodged by another individual. All this indicated that the District Court was not independent and impartial.

THE LAW

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention

22. The applicants complained of a violation of the guarantees of Article 1 of Protocol No. 1, which provides:

> "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."

1. The parties' submissions

23. The Government submitted that the applicants had not exhausted domestic remedies because they had failed to raise in substance their complaints under Article 1 of Protocol No. 1 before the domestic courts. They had never argued before the domestic courts that the deprivation of their alleged property had been unlawful and limited themselves to claiming ownership in respect of the house in question.

24. The Government further submitted that the applicants did not have possessions within the meaning of Article 1 of Protocol No. 1. They enjoyed only a right of use in respect of the house which did not, however, amount to "possessions".

25. The applicants claimed that they had exhausted all possible domestic remedies by applying to all three judicial instances. It was true that they did not invoke Article 1 of Protocol No. 1 in their application and appeals lodged with the domestic courts, but this did not mean that that provision had not been violated.

26. The applicants further claimed that the house in question was their property, since they had freely and continuously used and possessed it since 1926 and the Government had never attempted to contest their rights before the question of eviction arose. Furthermore, they enjoyed a right of ownership by virtue of adverse possession, since they had used the house in question as their property for more than ten years. Thus, they had possessions of which they were deprived unlawfully.

2. The Court's assessment

27. The Court notes that the parties disagreed whether the applicants had possessions within the meaning of Article 1 of Protocol No. 1. It does not, however, consider it necessary to rule on that disagreement because this complaint is in any event inadmissible for the following reasons.

28. The Court reiterates that it may only examine complaints in respect of which domestic remedies have been exhausted (see, among other authorities, *Valasinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000).

29. While in the context of machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned

decisions which allegedly violate a Convention right. It normally requires also that the complaints intended to be made subsequently at the international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I).

30. The object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address the allegation of a violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court. In so far as there exists at national level a remedy enabling the national courts to address, at least in substance, the argument of violation of the Convention right, it is that remedy which should be used. If the complaint presented before the Court (for example, unjustified interference with the right of property) has not been put, either explicitly or in substance, to the national courts when it could have been raised in the exercise of a remedy available to the applicant, the national legal order has been denied the opportunity to address the Convention issue which the rule on exhaustion of domestic remedies is intended to give it. It is not sufficient that the applicant may have, unsuccessfully, exercised another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies". It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III)

31. Turning to the circumstances of the present case, the Court observes that the applicants raised before the Court two distinct complaints under Article 1 of Protocol No. 1. In particular, they alleged that the deprivation of their alleged property was unlawful and that it was not in the public interest, as required by that Article. In addition, the applicants' complaint about the alleged unlawfulness of the deprivation was based on a specific argument, namely that the expropriation of their alleged possessions had been carried out on the basis of a governmental decree, namely Government Decree 1151-N, as opposed to a statute, in violation of the requirements of Article 28 of the Constitution.

32. The Court notes, however, that the applicants did not raise this issue either before the District Court or in the appeals against the District Court's judgment of 3 March 2005 which were, moreover, lodged only by the first applicant (see paragraphs 15 and 17 above). Nor did the applicants claim before the domestic courts that the alleged interference with their

possessions was not in the public interest. The only issue raised before the domestic courts was the first applicant's claim to have his ownership in respect of the house formally recognised (ibid.). The Court therefore concludes that the applicants have failed to raise before the domestic courts the complaints under Article 1 of Protocol No. 1 which they are currently raising before the Court.

33. It follows that the applicants have failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention, and that this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

B. Alleged violation of Article 6 of the Convention

34. The applicants further complained that the tribunal was not independent and impartial and invoked Article 6 of the Convention, which, in so far as relevant, provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by an independent and impartial tribunal..."

35. The Court reiterates its case-law concerning the rule on exhaustion of domestic remedies (see paragraphs 28-30 above) and notes that the applicants similarly failed to raise this complaint before the domestic courts.

36. It follows that the applicants have failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention, and that this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President