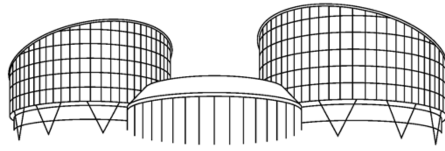

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NALTAKYAN AND OTHERS v. ARMENIA

(Application no. 47448/12)

JUDGMENT

STRASBOURG

4 July 2023

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Naltakyan and Others v. Armenia,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Anja Seibert-Fohr, *President*,
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 47448/12) 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") on 13 June 2012 by the applicants listed in Appendix I, ("the applicants") who were represented by Mr G. Margaryan, Ms M. Ghulyan and Ms S. Sahakyan, lawyers practising in Yerevan;

the decision to give notice of the application to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters;

the parties' observations;

Having deliberated in private on 13 June 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the expropriation of the applicants' property (for details see Appendix II) and the ensuing judicial proceedings.

2. On 25 February 2010 "A&M RARE" LLC ("the Company"), which was registered on the same day following its establishment on 5 February 2010, submitted an application to the Government seeking to acquire land in Artavaz rural community in Kotayk Region for the construction of a mineral water plant.

3. On the same date the Government adopted Decree no. 241-N ("the Decree") approving the expropriation zones within the administrative boundaries of Artavaz rural community, which included the plots of agricultural land owned by the applicants. The Decree stated that the expropriation was justified by a prevailing public interest in the implementation of the investment project involving the construction of a mineral water plant aimed at ensuring proportionate regional development. According to the Decree, the effective implementation of the project could not be ensured without the expropriation of the given property since the selection of the land had been done considering its layout, position and the presence of fresh mineral water, among other factors.

4. The Decree entered into force on 10 April 2010.

5. On 13 July 2010 the Company sent draft contracts on alienation of real estate to applicants Yervand Naltakyan, Yurik Naltakyan, Mekhak Abrahamyan, Khoren Naltakyan, Tsovinar Matevosyan, Margush Badalyan, Lyova Samsonyan, Arturik Arustamyan and Aleksan Tavakalyan, who were either sole owners of their properties or their names appeared first on the ownership certificates of joint properties (owner applicants). Those draft contracts contained compensation offers in line with the market value determined in real estate valuation reports issued in June by Tosp LLC, a private real estate evaluation company hired by the Company.

6. On 21 December 2010 the Company filed claims with the Kotayk Regional Court (the Regional Court) against the owner applicants based on the valuation and re-evaluation (showing that there had been no change in market value) reports issued by Tosp LLC in June and November 2010 respectively. The Regional Court did not notify the owner applicants about those claims upon the Company's request on the grounds that there had been certain inaccuracies in the Decree concerning the sizes of the relevant plots of land.

7. On 10 February 2011 the Government adopted Decree no. 100-N whereby they amended the Decree to state the correct measurements of the applicants' (except Tsovinar Matevosyan and Ararat Ter-Mkrtchyan) plots of land.

8. On 18 February 2011the Company filed claims with the Regional Court against owner applicants seeking to acquire their plots of land with payment of compensation. In support of its claims it referred to the Decree, as amended on 10 February 2011, the evaluation and re-evaluation reports of June and November 2010 respectively and certificates issued by Tosp LLC, which indicated the corrected sizes of the given plots of land and contained relevant adjustments in the market price (the amounts had been increased or decreased for some applicants or remained the same for others).

9. The owner applicants filed written submissions questioning the existence of a public interest in the expropriation by stating that the residents of the given rural community would be deprived of property having vital importance for them in the sense that they would no longer be able to cultivate their land. They further argued that the entire procedure had been arbitrary. In particular, the Company had failed to initiate the expropriation procedure within the three-month time-limit from the entry into force of the Decree (see paragraph 4 above) that is before 10 July 2010 thereby losing the right to acquire their property (Sections 10 and 16 of the Law of 27 November 2006 on Alienation of Property for the needs of Society and the State ("the Law")). Moreover, instead of supporting its claims by real estate evaluation reports in compliance with the Law on Real Estate Evaluation Activity, the Company had submitted certificates (letters) which could not serve as a lawful basis for the determination of the market value of their property. Even if those certificates indicated the correct sizes

of their property, the market value indicated in them had not been based on the correct sizes, considering that no fresh valuation had been carried out after the sizes of their plots of land had been rectified (see paragraph 7 above).

10. In the course of the proceeding the owner applicants submitted to the Regional Court a written clarification from the State Real Estate Registry in reply to their enquiry, that the certificates in question could not be considered a valuation report for the purposes of Section 11 of the Law on Real Estate Evaluation Activity.

11. In April 2011 the Regional Court notified the applicants Gurgen Ghazaryan, Hranush Arustamyan, Anahit Naltakyan, Hambardzum Naltakyan, Arkadi Badalyan, Armine Naltakyan, Vardanush Naltakyan, Arshaluys Abrahamyan, Rudolf Abrahamyan Radik Abrahamyan, Nikolay Arustamyan, Levon Arustamyan, Serozh Naltakyan, Naira Naltakyan, Varsenik Naltakyan and Ararat Ter-Mkrtchyan (joint owner applicants) that they had been involved in the proceedings as co-respondents. The joint owner applicants filed similar submissions (see paragraph 9 above).

12. The Regional Court rejected the applicants' request to order a forensic expert evaluation of their property on the grounds that Tosp LLC was a licensed real estate evaluator and that the certificates issued subsequently had merely supplemented the evaluation and re-evaluation reports submitted previously.

13. By 10 judgments delivered on 14 June 2011 the Regional Court authorised the expropriation with the payment of the amounts of compensation offered by the Company with the statutory 15% surplus (see Appendix 2 for details). Relying on Articles 328 and 329 of the Civil Code (calculation of monthly time-limits), the Regional Court found that the Company had respected the relevant time-limits (for sending the contracts and depositing the amounts of compensation) since their last days had fallen on non-working days extending them to the next working day. It also found that the evaluation of the property had been in accordance with the applicable legislation and that the compensation was adequate.

14. On 14 July 2011 the applicants appealed reiterating their arguments about the Company's failure to respect the relevant time-limits and the irregularities in the evaluation procedure resulting in inadequate compensation. The joint owner applicants argued that the Company had failed to undertake any action in respect of their shares in the joint ownership. The Regional Court had erred in the interpretation and application of Article 329 of the Civil Code since the rules of private law could not be applicable to a legal relationship involving compulsory deprivation of property for public interest which was regulated by the Law that contained specific rules for the calculation of the time-limits for the actions of the acquirer.

15. In September and October 2011 the Civil Court of Appeal delivered decisions whereby it fully upheld the Regional Court's judgments. As regards the joint owner applicants, it relied on Article 198 § 3 of the Civil Code according to which each owner in joint ownership had the right to dispose of the joint property, unless the joint owners had agreed otherwise to conclude that in such cases there was a presumption that all owners had endorsed the agreement entered by one of the owners.

16. The applicants lodged appeals on points of law which were declared inadmissible for lack of merit by the Court of Cassation on 23 November, 7, 14 and 23 December 2011.

17. In its decision of 24 February 2012 on the constitutionality of Article 198 § 3 of the Civil Code (see paragraph 15 above) the Constitutional Court noted that its application had been far from being certain in judicial practice and stressed the importance of safeguarding the rights of all owners in joint ownership of property noting that the positive agreement of all joint owners was required in case one owner concluded an agreement concerning property under joint ownership.

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

THE COURT'S ASSESSMENT

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

19. The Court notes at the outset that applicants Yurik Naltakyan, Margush Badalyan and Khoren Naltakyan died after the introduction of the application (see Appendix I for the relevant dates). Their heirs, applicants Yervand Naltakyan, Arkadi Badalyan and Serozh Naltakyan respectively, applied to pursue the application in their stead.

20. Having regard to the submitted documents and the relevant case-law principles, the Court accepts that applicants Yervand Naltakyan, Arkadi Badalyan and Serozh Naltakyan have the requisite *locus standi* to pursue the proceedings in the deceased applicants' (see paragraph 19 above) name (see *Mnatsakanyan v. Armenia*, no. 2463/12, §§ 39-43, 6 December 2022, with further references).

21. The Government submitted that, following the Constitutional Court's decision of 24 February 2012, the applicants (except Varsenik Naltakyan, Lyova Samsonyan and Aleksan Tavakalyan) had sought re-opening of their cases but had failed to inform the Court about the ensuing decisions of the Court of Cassation whereby it had declared their appeals inadmissible, arguing that such failure had amounted to an abuse of the right of petition.

22. The Court reiterates that not every omission of information will amount to abuse; the information in question must concern important developments preventing the Court from ruling on the case in full knowledge of the facts (see *Gevorgyan and others* (dec.), no. 66535/10, § 33, with further references).

23. The Court of Cassation refused the above-mentioned applicants' requests to re-open the proceedings without any further analysis on the interpretation and application of the disputed legal provisions. The Court is therefore not convinced that the applicants' failure to inform of the given developments amounted to an abuse of the right of individual petition (contrast *Gevorgyan and others*, cited above, §§ 34-39). It therefore rejects the Government's objection.

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

25. It is common ground between the parties that there has been a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1. to the Convention.

26. The applicable general principles have been summarised in *Vistiņš and Perepjolkins v. Latvia* ([GC], no. 71243/01, §§ 95-99 and 108-14, 25 October 2012; see also *Osmanyan and Amiraghyan v. Armenia*, no. 71306/11, §§ 51-53, 60 and 62-63, 11 October 2018).

27. It is not in dispute that the expropriation 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). The applicants argued, however, that the manner in which the domestic court interpreted and applied the Law was unforeseeable.

28. Having regard to the manner in which the domestic courts addressed the applicant's arguments, including as regards the observance of relevant time-limits, evaluation of the property and calculation of compensation, and, most importantly, the (non-)involvement of joint owners in the expropriation procedure (see paragraphs 9-15 and 17 above), the Court remains doubtful as to whether the impugned expropriation may be regarded as having been carried out "subject to the conditions provided for by the law". However, the Court does not find it necessary to settle that question, as the impugned expropriation breaches Article 1 of Protocol No. 1 for other reasons (see, *mutatis mutandis*, *Vistiņš and Perepjolkins*, cited above, § 105 and paragraph 30 below).

29. As regards the legitimacy of the aim pursued by the impugned expropriation, the Government relied on those stated in the Decree (see paragraph 3 above). 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, and see *Osmanyan and Amiraghyan*, cited above, § 61).

30. Lastly, the Court reiterates that compensation terms under the relevant legislation are material to any assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants (see *Vistiņš and Perepjolkins*, cited above, §§ 110-14).

31. According to domestic law the applicants were entitled to full compensation consisting of the estimated market value of their property and an addition 15% of that amount. However, the Regional Court determined the compensation due to the applicants solely on the valuation reports prepared by Tosp LLC as supplemented by the certificates issued after the rectification of the Decree and refused the applicants' request to order an expert examination to determine the real market value of their property which they claimed had been underestimated (see paragraphs 7-8 and 12-13 above).

32. That being said, the applicants, although having the opportunity under the law to submit alternative valuation reports, did not make use of that opportunity and did not explain the reason(s) for failing to do so (contrast *Minasyan and Semerjyan v. Armenia*, no. 27651/05, § 85, 23 June 2009, and *Osmanyan and Amiraghyan*, cited above, § 20).

33. Given the Regional Court's refusal to exercise its discretion to seek an expert valuation of the applicants' property while the latter, as already noted, did not seek an alternative valuation, the Court finds 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 (see, *mutatis mutandis*, *Osmanyan and Amiraghyan*, cited above, § 66).

34. That said, the applicants submitted before the domestic courts (see paragraphs 9 and 11 above) and before the Court that, as people living in a rural area, the land in question constituted a means of their activity and existence. This particular aspect was neither addressed by the domestic courts nor taken into account in their decisions on the amount of compensation in that they did not address the issue whether the compensation granted would cover the applicants' actual loss involved or was at least sufficient for them to acquire equivalent land within the area in which they lived (ibid., §§ 69-71).

35. In view of the foregoing, the Court finds that the applicants had to bear an excessive individual burden. There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER COMPLAINTS

36. Relying on Article 6 of the Convention, the applicants also raised a number of complaints concerning the lack of a fair hearing. Having regard to the facts of the case, the submissions of the parties, and its findings

above, the Court considers that it has dealt with the main legal question raised by the case and that there is no need to examine the applicants' complaints under Article 6 of the Convention (see *Hakobyan and Amirkhanyan v. Armenia*, no. 14156/07, § 56, 17 October 2019, and *Ghasabyan and Others v. Armenia*, no. 23566/05, § 29, 13 November 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. The applicants claimed 571,969 euros (EUR) in respect of pecuniary damage which included the market value of the land (industrial purpose) as of May 2022 with the 15% statutory surplus. They further asked the Court to award them compensation for non-pecuniary damage and requested EUR 14,685 in respect of costs and expenses incurred before the Court.

38. The Government contested those claims.

39. Given the nature of the violation found, the Court finds that the applicants undoubtedly suffered some pecuniary and non-pecuniary damage (see, *mutatis mutandis*, *Osmanyan and Amiraghyan*, cited above, § 75). Making an assessment on an equitable basis, the Court awards the applicants the sums indicated in Appendix II to cover all heads of damage, plus any tax that may be chargeable to them.

40. Lastly, having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,000 to the applicants jointly for the costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to them.

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* that there is no need to examine the admissibility and merits of the complaints under Article 6 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (i) the amounts indicated in Appendix II, in respect of pecuniary and non-pecuniary damage;
   (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, 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;

5. *Dismisses* the remainder of the applicants’ claim for just satisfaction.

Done in English, and notified in writing on 4 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu Acting Deputy Registrar	Anja Seibert-Fohr President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Yervand NALTAKYAN	1958	Armenian	Artavaz
2.	Arshaluys ABRAHAMYAN	1950	Armenian	Pyunik
3.	Mekhak ABRAHAMYAN	1948	Armenian	Pyunik
4.	Radik ABRAHAMYAN	1982	Armenian	Pyunik
5.	Rudolf ABRAHAMYAN	1972	Armenian	Artavaz
6.	Arturik ARUSTAMYAN	1964	Armenian	Artavaz
7.	Hranush ARUSTAMYAN	1968	Refugee status	Artavaz
8.	Levon ARUSTAMYAN	1987	Refugee status	Artavaz
9.	Nikolay ARUSTAMYAN	1989	Refugee status	Artavaz
10.	Arkadi BADALYAN	1961	Armenian	Hrazdan
11.	Margush BADALYAN	1935 Deceased in 2020	Armenian	Artavaz
12.	Gurgen GHAZARYAN	1968	Armenian	Artavaz
13.	Tsovinar MATEVOSYAN		Armenian	Artavaz
14.	Anahit NALTAKYAN	1957	Armenian	Artavaz
15.	Armine NALTAKYAN	1986	Armenian	Artavaz
16.	Hambardzum NALTAKYAN	1985	Armenian	Artavaz
17.	Khoren NALTAKYAN	1956 Deceased in 2017	Armenian	Artavaz
18.	Naira NALTAKYAN	1979	Refugee status	Artavaz

No.	Applicant's Name	Year of birth	Nationality	Place of residence
19.	Serozh NALTAKYAN	1981	Armenian	Artavaz
20.	Vardanush NALTAKYAN	1961	Armenian	Artavaz
21.	Varsenik NALTAKYAN	1982	Armenian	Artavaz
22.	Yurik NALTAKYAN	1929 Deceased in 2020	Armenian	Artavaz
23.	Lyova SAMSONYAN	1962	Armenian	Yerevan
24.	Aleksan TAVAKALYAN	1979	Armenian	Hrazdan
25.	Ararat TER-MKRTCHYAN	1968	Armenian	Artavaz

APPENDIX II

List of applicants per units of property:

No.	Applicant's Name	Size of plots of land in ha and type of ownership	Domestic compensation for each unit of land in Armenian Dram	Amount awarded for pecuniary and non-pecuniary damage in euros
1.	Yervand NALTAKYAN Armine NALTAKYAN Hambardzum NALTAKYAN Vardanush NALTAKYAN	1,13 ha, joint ownership	2,536,400	10,800 (jointly)
2.	Khoren NALTAKYAN Anahit NALTAKYAN Varsenik NALTAKYAN Serozh NALTAKYAN Naira NALTAKYAN	1,012 ha, joint ownership	2,290,800	10,800 (jointly)
3.	Yurik NALTAKYAN	0,475 ha	1,114,600	10,800 (to be paid to Yervand Naltakyan)
4.	Mekhak ABRAHAMYAN Arshaluys ABRAHAMYAN Radik ABRAHAMYAN Rudolf ABRAHAMYAN	1,051 ha, joint ownership	2,344,300	10,800 (jointly)

No.	Applicant's Name	Size of plots of land in ha and type of ownership	Domestic compensation for each unit of land in Armenian Dram	Amount awarded for pecuniary and non-pecuniary damage in euros
5.	Gurgen GHAZARYAN	Three units: 0,399 ha, 0,73 ha and 0,94 ha, joint ownership	941,850, 698,050 and 624,800 respectively	10,800
6.	Arturik ARUSTAMYAN Hranush ARUSTAMYAN Levon ARUSTAMYAN Nikolay ARUSTAMYAN	1,223 ha, joint ownership	1,262,700	10,800 (jointly)
7.	Arkadi BADALYAN Margush BADALYAN	0,798 ha, joint ownership (1/4 and 3/4 respectively)	656,650	10,800 (jointly)
8.	Lyova SAMSONYAN	0,408 ha	966,000	10,800
9.	Aleksan TAVAKALYAN	Two units: 0,479 ha and 0,094 ha	1,736,350	10,800
10.	Tsovinar MATEVOSYAN Ararat TER-MKRTCHYAN	0,49 ha, joint ownership	1,130,450	10,800 (jointly)