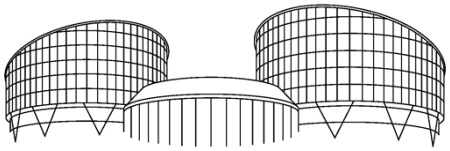

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NALTAKYAN AND OTHERS v. ARMENIA

(Application no. 30312/11)

JUDGMENT

STRASBOURG

4 July 2023

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

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. 30312/11) 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") on 2 May 2011 by the applicants listed in Appendix I ("the applicants") who were represented by Ms S. Sahakyan, Ms M. Ghulyan and Mr G. Margaryan, lawyers practising in Yerevan;

the decision to give notice of the complaint concerning the alleged breach of the applicants' right of access to the Court of Cassation to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare inadmissible the remainder of the application;

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 refusal of the Court of Cassation to admit an appeal on points of law lodged by the applicants against a decision delivered in administrative proceedings in which they had disputed a Government Decree listing their plots of agricultural land as property to be taken for the needs of the State.

2. On 25 February 2010 A&M RARE, a limited liability company ("the Company"), was registered following its establishment on 5 February 2010.

3. On the same date the Company submitted an application to the Government on the basis of the Law on Alienation of Property for the needs of Society and the State ("the Law"), seeking to acquire plots of land in Artavaz village community. According to the application, the acquisition of the land was necessary for a prevailing public interest, namely the implementation of an investment project on the construction of a mineral water plant in the community.

4. On 25 February 2010 the Government adopted Decree no. 241-N ("the Decree") approving the expropriation zones of territories situated within the administrative boundaries of the rural community of Artavaz in Kotayk Region, which included plots of agricultural land owned by the applicants, to

be taken for State needs. The Decree stated that the expropriation was justified by a prevailing public interest in the implementation of an investment project (construction of a mineral water plant) aimed at ensuring proportionate regional development. The applicants' plots were listed among the units of land falling within those expropriation zones selected according to technical criteria (layout, engineering-construction compliance, presence of fresh mineral water in the region etc.).

5. On 7 May 2010 the applicants and a number of other landowners in the community lodged a claim with the Administrative Court seeking the annulment of the Decree. They argued that the Decree was unlawful and that the Government had failed to strike a fair balance between their interests and the invoked public interest. The Law required that the acquiring entity submit an application with the Government containing reasons for an expropriation, while the Government had to examine those reasons, in consultation with other relevant authorities, and then make a decision. In their case, however, the registration of the Company, alleged submission of the application and the adoption of the Decree had taken place on the same day, which showed the perfunctory and arbitrary nature of the decision-making process in relation to the deprivation of their property. In particular, having been registered on the same date as the adoption of the Decree, it was both theoretically and practically impossible for the Company to have filed an application complying with all the formal requirements of the Law and the relevant procedure followed since the submission of such an application precedes its discussion by the Government, the preparation of the draft decree and its discussion with the relevant authorities before the adoption of the relevant decree.

6. On 14 September 2010 the Administrative Court rejected the claim finding, with reference to the Decree, that its adoption had pursued the prevailing public interest in the economic development of the community and the region through creation of jobs and efficient use of its resources by ensuring that underground water (spring and mineral) is protected from pollution from mining (protection of the environment). The fact that the registration of the Company, its submission of the expropriation application and the adoption of the Decree had taken place on the same day did not render the Decree unlawful. The applicants were not entitled to substantiate their claim by the argument that the Government had failed to hold consultations with the relevant entities since that question was within the Government's powers.

7. On 14 October 2010 the applicants filed an appeal on points of law. They argued, in particular, that the Administrative Court had merely referred to the invoked public interest in the expropriation of their property failing, however, to examine their individual interests and balance (compare) those against that interest. In particular, their land, which was "a source of vital interest" for them as farmers living in the given rural area, was being

expropriated for the business purposes of a private company without due consideration of that aspect. Instead of examining the Decree as is in terms of its adoption procedure, content and form, the Administrative Court had in fact "supplemented" the Decree by referring to certain interests not even mentioned therein such as "economic development", "creation of jobs", "efficient use of resources" and "protection of the environment". Lastly, the Administrative Court had failed to properly address their arguments with regard to the breach of the legal procedure for the adoption of the Decree.

8. On 3 November 2010 the Court of Cassation declared the appeal inadmissible ("returned" it, that is refused leave to appeal) with the following reasoning:

> "...The Court of Cassation finds that the appellants' arguments concerning the violations of the substantive and procedural law by [the Administrative Court] are rebutted by the reasoning stated in the [Administrative Court's] decision.
>
> Thus, [quotation from the Administrative Court's decision]...
>
> ... in its judgment in the case of [*Meltex Ltd and Movsesyan v. Armenia*, no. 32283/04, § 88, 17 June 2008 the Court] has stated, with regard to the reasoning of a Court of Cassation's decision...that "...the Court of Cassation's competence was limited only to examination on points of law. In such circumstances, it cannot be said that the Court of Cassation failed to provide reasons merely because it endorsed the findings of the lower court and incorporated them in its decisions".
>
> [the] appellants have not justified that the judicial act to be adopted by the Court of Cassation in this case can have a significant impact on the uniform application of the law.
>
> ...
>
> [the] admissibility grounds raised by the appellants in the appeal on points of law arguing that [the Administrative Court has committed] a judicial error and that the judicial act to be adopted by the Court of Cassation in this case can have significant impact on the uniform application of the law are unfounded since it has not been substantiated that there has been such violation of the substantive or procedural law which could have had decisive influence on the outcome of the case.
>
> Thus, the Court of Cassation finds that the appeal on points of law does not satisfy the requirements of Article 234 § 1 of the Code of Civil Procedure and those of Article 118.6 § 1 of the Code of Administrative Procedure. Accordingly, it must be returned ..."

9. Relying on Article 6 § 1 of the Convention, the applicants complained that they had been deprived of access to the Court of Cassation.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

10. The Court notes at the outset that applicants Yurik and Tonik Naltakyans, Margush Badalyan, Khoren Naltakyan and Haykaz Ghazaryan

died after the introduction of the application (see Appendix I for the relevant dates). Their heirs, applicants Yervand Naltakyan (for Yurik and Tonik Naltakyans), Arkadi Badalyan, Serozh Naltakyan and Gurgen Ghazaryan respectively, applied to pursue the application in their stead.

11. The Government contended that the application concerned non-transferable rights. They also argued that applicant Arkadi Badalyan had failed to provide relevant documents to substantiate his standing to pursue the application on behalf of the late applicant Margush Badalyan.

12. Having regard to the submitted documents and the relevant case-law principles, the Court accepts that applicants Yervand Naltakyan, Arkadi Badalyan, Serozh Naltakyan and Gurgen Ghazaryan have the requisite *locus standi* to pursue the proceedings in the deceased applicants' (see paragraph 10 above) name (see *Mnatsakanyan v. Armenia*, no. 2463/12, §§ 39-43, 6 December 2022, with further references).

13. The application 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.

14. The general principles concerning the right of access to a higher court have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 80-82 and § 84, 5 April 2018).

15. The applicants argued that the Court of Cassation, which had acted as the only court of appeal for the Administrative Court's decision of 14 September 2010 (see paragraph 6 above), had unjustifiably restricted their access to judicial review. They relied on the Constitutional Court's decisions of 25 November 2008 (no. 780) and 13 April 2010 (no. 873) which had essentially found that the application of the same admissibility criteria, as those applied in three-level civil proceedings, in respect of appeals on points of law in administrative proceedings, where there was no second level of appeal, constituted "an unjustified restriction to the right of judicial protection". Those decisions had eventually led to the legislative amendments in the Code of Administrative Procedure whereby, shortly after the completion of the proceedings at issue in the present case, the Administrative Court of Appeal was set up as a second appeal instance for cases examined by the Administrative Court.

16. The Government maintained that the mere fact that at the material time the decisions of the Administrative Court were subject to appeal before the Court of Cassation as the first and final appeal instance was not in breach of the requirements of Article 6 of the Convention. In its decision of 3 November 2010 (see paragraph 8 above) the Court of Cassation had referred to the relevant provisions of domestic law and the findings of the lower court to conclude that there were no grounds to consider that the judicial act to be adopted in the applicants' case might have had a significant impact on the uniform application of the law. Lastly, the Administrative Court had given a substantiated ruling on their case.

17. The Court reiterates that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their civil rights and obligations (see *Zubac*, cited above, § 80, with further references). Furthermore, the manner in which Article 6 § 1 applies to courts of appeal or of cassation depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's role in them (ibid., § 82).

18. The Court notes that the Court of Cassation, acting as the final instance, refused to grant the applicants leave to appeal the Administrative Court's decision of 14 September 2010 with reference to the same decision and the relevant legal provisions to dismiss the applicants' appeal on points of law as having no prospects of success (see paragraphs 6 and 8 above).

19. The Court notes that it has already found that, particularly in so far as civil proceedings were concerned, the Court of Cassation's refusal to admit an appeal on points of law for examination on the merits with a limited reasoning was not in breach of the requirements of Article 6 § 1 of the Convention (see *Nersesyan v. Armenia* (dec.), no. 15371/07, §§ 9 and 24, 19 January 2010). To reach that finding, the Court took account of the fact that the case had been examined at two judicial instances with full jurisdiction which had given detailed reasons for their judgments (ibid.).

20. In the present case, however, prior to the leave-to-appeal proceedings before the Court of Cassation the applicants' case had been examined only by the Administrative Court, which, as they argued before the Court of Cassation when seeking leave to appeal, had failed to examine their core arguments to contest the Decree, including as to the existence of a public interest in the expropriation, for commercial purposes, of the property which was the only source of their income and the alleged irregularities in the procedure of the adoption of the Decree (see paragraphs 5-7 above). In its turn, the Court of Cassation did not specifically address the grounds for appeal invoked by the applicants, including their arguments that the Administrative Court had failed to examine the core issues raised by them in their complaint (see paragraph 5 above), and in its decision of 3 November 2010 limited itself to simply citing the relevant legal provisions and parts of the Administrative Court's decision to refuse the applicants' leave to appeal (see, *mutatis mutandis*, *Helle v. Finland*, 19 December 1997, § 60, *Reports of Judgments and Decisions* 1997-VIII).

21. The Government referred to the Court's judgment in the case of *Meltex Ltd and Movsesyan* (cited above, § 88) which was cited in the Court of Cassation's decision of 3 November 2010. That judgment, however, concerned events that had taken place prior to the constitutional amendments of 27 November 2005 after which the Court of Cassation was entrusted with

a new role, namely to ensure the uniform application and correct interpretation of the law and to promote its development resulting in the introduction of new (much stricter) admissibility requirements for appeals on points of law. Hence, having examined in that case the extent to which the Court of Cassation had given reasons to reject the applicant company's practically identical arguments to the ones raised before the lower court which, in the Court's opinion, had been carefully examined by that court, it considered that the Court of Cassation could not be said to have failed to properly reason its decision only because it had relied on the lower court's findings.

In the present case, the Court of Cassation, applying the newly-introduced admissibility criteria and by merely citing the relevant parts of the contested Administrative Court's decision, refused to grant the applicants leave to appeal that decision which, as they argued in their appeal, had failed to address their core arguments.

22. Against this background, the Court finds that such a summary dismissal of the arguments raised in the applicants' appeal on points of law by the Court of Cassation acting as the only and final instance to examine the lower court's decision which, as the applicants argued, had failed to address their main arguments, restricted their access to judicial review in such a way or to such an extent that the very essence of the right to a court was impaired (compare and contrast *Zubac*, § 125, and *Nersesyan*, § 24, both cited above)

23. There has accordingly been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicants asked the Court to award them compensation for non-pecuniary damage. They further requested 5,670 euros (EUR) in respect of costs and expenses incurred before the Court.

25. The Government contested these claims.

26. The Court considers that the applicants must have sustained non-pecuniary damage as a result of the Court of Cassation's refusal to examine the merits of their appeal on points of law against the Administrative Court's decision whereby the latter court had upheld the Decree approving the expropriation of their property. Making its assessment on an equitable basis, it awards EUR 3,600 under this head to each household and each individual applicant, as specified in Appendix II below.

27. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000 to the applicants jointly for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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) EUR 3,600 (three thousand six hundred euros) to each household and each individual applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros) to the applicants jointly, 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;

4. *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 Nicolsecu Acting Deputy Registrar	Anja Seibert-Fohr President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	Yervand NALTAKYAN	1958	Armenian	Artavaz
2.	Arshaluys ABRAHAMYAN	1950	Armenian	Pyunik village
3.	Mekhak ABRAHAMYAN	1948	Armenian	Pyunik village
4.	Radik ABRAHAMYAN	1982	Armenian	Pyunik village
5.	Arturik ARUSTAMYAN	1964	Armenian	Artavaz
6.	Hranush ARUSTAMYAN	1968	Refugee status	Artavaz
7.	Levon ARUSTAMYAN	1987	Refugee status	Artavaz
8.	Nikolay ARUSTAMYAN	1989	Refugee status	Artavaz
9.	Arkadi BADALYAN	1961	Armenian	Hrazdan
10.	Margush BADALYAN	1935 Deceased in 2020	Armenian	Artavaz
11.	Haykaz GAZARYAN	1929 Deceased in 2012	Armenian	Artavaz
12.	Gurgen GHAZARYAN	1968	Armenian	Artavaz
13.	Sasun MIKAYELYAN	1957	Armenian	Hrazdan
14.	Hambardzum NALTAKYAN	1985	Armenian	Artavaz
15.	Khoren NALTAKYAN	1956 Deceased in 2017	Armenian	Artavaz village
16.	Naira NALTAKYAN	1979	Refugee status	Artavaz
17.	Serozh NALTAKYAN	1981	Armenian	Artavaz village

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
18.	Tonik NALTAKYAN	1936 Deceased in 2012	Armenian	Artavaz
19.	Vardanush NALTAKYAN	1961	Armenian	Artavaz
20.	Varsenik NALTAKYAN	1982	Armenian	Artavaz
21.	Yurik NALTAKYAN	1929 Deceased in 2020	Armenian	Artavaz
22.	Grisha SAHAKYAN	1954	Armenian	Artavaz
23.	Lyova SAMSONYAN	1962	Armenian	Yerevan
24.	Aleksan TAVAKALYAN	1979	Armenian	Hrazdan

APPENDIX II

List of applicants (individual and forming household):

Household

1. Yervand NALTAKYAN
2. Vardanush NALTAKYAN
3. Hambardzum NALTAKYAN

Household

4. Mekhak ABRAHAMYAN
5. Radik ABRAHAMYAN
6. Arshaluys ABRAHAMYAN

Household

7. Tonik NALTAKYAN
8. Yurik NALTAKYAN

Household

9. Levon ARUSTAMYAN
10. Arturik ARUSTAMYAN
11. Hranush ARUSTAMYAN
12. Nikolay ARUSTAMYAN

Household

13. Arkadi BADALYAN
14. Margush BADALYAN

Household

15. Varsenik NALTAKYAN
16. Naira NALTAKYAN
17. Khoren NALTAKYAN
18. Serozh NALTAKYAN

Household

19. Gurgen GHAZARYAN
20. Haykaz GHAZARYAN

Individual applicants:

21. Grisha SAHAKYAN

22. Lyova SAMSONYAN

23. Sasun MIKAYELYAN

24. Aleksan TAVAKALYAN