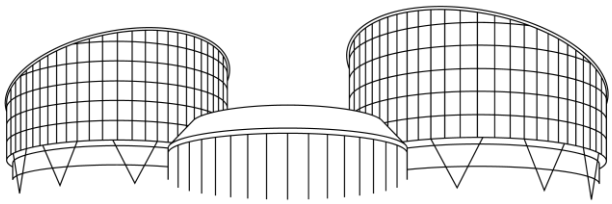

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF HOVHANNISYAN AND SHIROYAN v. ARMENIA

(Application no. 5065/06)

JUDGMENT
(*merits*)

STRASBOURG

20 July 2010

FINAL

20/10/2010

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

In the case of Hovhannisyan and Shiroyan v. Armenia**,**

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

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

Having deliberated in private on 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 5065/06) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Armenian nationals, Mr Hovhannes Hovhannisyan, Ms Astghik Hovhannisyan and Ms Diana Shiroyan ("the applicants"), on 17 January 2006.

2. The applicants were represented by Mr V. Grigoryan, 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.

3. On 3 September 2007 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1976, 1973 and 1999 respectively and live in Yerevan.

5. According to the applicants, they enjoyed a right of use of accommodation in respect of 33.8 sq. m of a flat which in total measured 66.8 sq. m. and was situated at 17 Byuzand Street, Yerevan. It appears that

the flat was owned by their family member, K.H. The Government contested this allegation and claimed that only the applicants Hovhannes Hovhannisyan and Astghik Hovhannisyan ("the first applicant" and "the second applicant") enjoyed such a right, while the applicant Diana Shiroyan ("the third applicant"), who was a minor, was only entitled to live in the flat in question.

6. 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.

7. 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, Vizkon Ltd.

8. On 1 October 2004 Vizkon Ltd 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.

9. By a letter of 25 February 2005 Vizkon Ltd informed the first and second applicants that the flat in question was situated within the expropriation zone of the Main Avenue area and was to be taken for State needs. Each applicant was offered a total of the Armenian dram (AMD) equivalent of 3,500 United States dollars (USD) as financial assistance, pursuant to paragraphs 7(c) and 8(e) of the compensation procedure approved by Government Decree no. 950 of 5 October 2001 (see paragraphs 26 and 27 below; hereafter, "the compensation procedure").

10. It appears that the first and second applicants did not accept this offer.

11. On an unspecified date, Vizkon Ltd instituted proceedings against the first and second applicants on behalf of the State, seeking to terminate their right of use through payment of financial assistance and to evict all the applicants with reference to, *inter alia*, Articles 218 and 220 of the Civil Code. The plaintiff claimed that persons enjoying a right of use were entitled, pursuant to paragraph 8 of the compensation procedure, to receive assistance in the Armenian dram equivalent of USD 3,500.

12. It appears that in the course of the court proceedings Vizkon Ltd offered the same amount of compensation also to the third applicant, since she was also registered at the flat in question. The third applicant joined the proceedings as a co-defendant.

13. On 2 March 2005 a contract was signed between Vizkon Ltd and the owner of the flat, K.H., according to which she agreed to cede the flat to the

State in exchange for another flat. It appears that two other persons who also enjoyed a right of use in respect of the same flat accepted the price offers made to them and gave up their rights.

14. On 16 March 2005 the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) granted the claim of Vizkon Ltd, terminating the applicants' right of use and awarding them a total of the Armenian dram equivalent of USD 10,500 as compensation. In doing so, the court referred to Article 218 §§ 1 and 2 and Article 220 § 1 of the Civil Code, as well as paragraph 10 of the compensation procedure.

15. On 31 March 2005 the applicants lodged an appeal.

16. On 3 June 2005 the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) granted the claim of Vizkon Ltd on the same grounds as the District Court.

17. On 16 June 2005 another contract was signed between Vizkon Ltd and the owner of the flat, K.H., similar to that of 2 March 2005.

18. On 21 June 2005 the applicants lodged an appeal on points of law which they supplemented on 15 July 2005.

19. On 24 June 2005 the State's ownership in respect of the flat was formally registered on the basis of the contract of 16 June 2005.

20. On 18 July 2005 the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) dismissed the applicants' appeal.

II. RELEVANT DOMESTIC LAW

A. The domestic provisions related to the right of use of accommodation

21. For a summary of the relevant domestic provisions see the judgment in the case of *Minasyan and Semerjyan v. Armenia* (no. 27651/05, §§ 23 and 34-43, 23 June 2009).

B. Other relevant domestic provisions

1. The Civil Code (as in force at the material time)

22. According to Article 135, the right of ownership and other property rights in respect of immovable property, their limitations, origin, transfer and termination are subject to State registration.

23. According to Article 176, in cases when a right in respect of property is subject to State registration, the acquirer's right of ownership arises from the moment of such registration.

24. Article 218 §§ 1 and 2 provided that a plot of land might be taken from the owner for the needs of the State or the community by compensating its value. Depending on for whose needs a plot of land was to be taken, its value was to be compensated by either the State or the community. The decision to take a plot of land for the needs of the State or the community was to be taken by a public authority.

25. Article 220 § 1 provided that, if no agreement could be reached with the owner of the plot of land to be taken for State needs concerning the amount or other conditions of compensation, the relevant public authority might institute court proceedings seeking to take the plot of land.

2. Government Decree no. 950 of 5 October 2001 Approving the Procedure for Purchasing, Taking, Fixing the Price Offer and Realising the Plots of Land and Immovable Property Situated in the Northern Avenue's and Other Expropriation Zones of Yerevan (as in force at the material time)

26. According to paragraph 7(c) of the compensation procedure, persons and their minor children – who were registered, including in unauthorised constructions, prior to the date on which State registration was made (28 August 2001) on the basis of the competent public authority's decision to take the plot of land for the needs of the State – shall each receive assistance in the amount of the Armenian dram equivalent of USD 2,000, based on the document confirming the fact of registration (passport, birth certificate or a certificate provided by the competent authority in charge of the registration).

27. According to paragraph 8(e) of the compensation procedure, persons mentioned in Paragraph 7(c) of this Procedure shall receive assistance in the amount of the Armenian dram equivalent of USD 1,500.

28. According to paragraph 10 of the compensation procedure, persons who have acquired a right of use or of lease in accordance with the procedure prescribed by law in respect of a plot of land situated in an expropriation zone shall receive as compensation the assessed value of the right of use or of lease of the given plot of land.

THE LAW

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

29. The applicants complained that the deprivation of their possessions was in violation of the guarantees of Article 1 of Protocol No. 1, 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. The parties' submissions

30. The Government submitted that the applicants did not have "possessions" within the meaning of Article 1 of Protocol No. 1. At the time of expropriation the sole owner of the flat was the State, as evidenced by the two contracts signed between the State and its former owner, K.H. The applicants, on the other hand, enjoyed only a right of use of accommodation in respect of the flat, which was equal to an entitlement to reside there and could not be considered as "possessions". This right was not absolute and could be terminated under Article 225 of the Civil Code upon request by the owner, which happened in the present case.

31. Furthermore, the third applicant did not enjoy independently even a right of use because she was a minor and enjoyed only the right to live in the house together with her mother – the second applicant – by virtue of Section 16 of the Children's Rights Act. In sum, given that the applicants did not have possessions, their complaint was incompatible *ratione materiae* with the provisions of Article 1 of Protocol No. 1.

32. The applicants submitted that all three applicants enjoyed a right of use of accommodation in respect of the flat. This was supported by the evidence in the case and, in particular, the findings of the domestic courts which decided to terminate the right of use of all three applicants. This right was a property right and amounted to a "possession" within the meaning of Article 1 of Protocol No. 1.

33. The applicants further submitted that the deprivation of their possessions was not carried out under the conditions provided for by law

and violated, in particular, the requirements of Article 28 of the Constitution and Article 225 of the Civil Code. The latter provision, in particular, prescribed that a right of use of accommodation could be terminated only upon request of the *owner* of the flat. However, at the time when the Court of Appeal granted the claim of Vizkon Ltd, namely on 3 June 2005, the flat did not belong to the State yet and was owned solely by K.H. The State's ownership in respect of the flat was registered only on 24 June 2005 and this issue was never even raised during the proceedings before the Court of Cassation.

34. The applicants finally argued that the deprivation of their possessions did not pursue a legitimate aim in the general interest because it was effected solely for the benefit of a private company, Vizkon Ltd. Moreover, the amount of compensation offered to them was arbitrary and unsubstantiated.

B. The Court's assessment

1. Admissibility

35. The Court considers that the Government's objection regarding the incompatibility of the applicants' complaint with the provisions of Article 1 of Protocol No. 1 is closely linked to the substance of their complaint under that Article, and should therefore be joined to the merits.

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

2. Merits

(a) Whether there was an interference with the applicants' possessions

37. The Court notes that the Government claimed that the applicants did not have "possessions" within the meaning of Article 1 of Protocol No. 1. The Court points out, however, that it has already found that the right of use of accommodation constituted a "possession" within the meaning of that Article (see *Minasyan and Semerjyan v. Armenia*, cited above, § 56).

38. As regards specifically the third applicant, the Court observes that the Government's claim has no basis in the findings of the domestic courts, which found that all the applicants enjoyed a right of use of accommodation and decided to terminate that right through payment of compensation.

39. The Court concludes that all the applicants in the present case enjoyed a right of use of accommodation in respect of the flat in question and the termination of that right for the purpose of implementing

construction projects in the centre of Yerevan amounted to an interference with the applicants' peaceful enjoyment of their possessions in the form of deprivation of property (*ibid.*, §§ 59 and 61). The Government's objection regarding the incompatibility of the applicants' complaint with the provisions of Article 1 of Protocol No. 1 must therefore be dismissed.

(b) Whether the interference with the applicants' possessions was justified

40. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that the States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII).

41. The Court further reiterates that the phrase "subject to the conditions provided for by law" requires in the first place the existence of and compliance with adequately accessible and sufficiently precise and foreseeable domestic legal provisions (see *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 110, Series A no. 102; *Hentrich v. France*, 22 September 1994, § 42, Series A no. 296-A; and *Beyeler v. Italy* [GC], no. 33202/96, § 109, ECHR 2000-I).

42. The Court notes that it has previously examined a complaint concerning the termination of the right of use by the authorities for the purpose of implementation of construction projects in the centre of Yerevan and found that such interference with the applicant's possessions – with reliance on Article 225 of the Civil Code – was arbitrary and unlawful (see *Minasyan and Semerjyan*, cited above, § 75-76). In the present case, the Government alleged that the applicants' right of use was terminated similarly on the basis of Article 225 and with full respect for the requirements of that Article, since the State was the owner of the flat in question at the material time and it was entitled under that Article to have the applicants' right of use terminated through payment of adequate compensation.

43. The Court notes, however, that the State acquired ownership of the flat, pursuant to Articles 135 and 176 of the Civil Code, only on 24 June 2005, when its right of ownership was formally registered (see paragraph 19 above). Thus, at the time when Vizkon Ltd instituted proceedings against the applicants seeking to terminate their right of use, and when the District Court and the Court of Appeal decided on the merits of that claim, namely on 16 March and 3 June 2005 respectively, the sole owner of the flat was a third person, K.H. It is true that a contract had been

signed between K.H. and Vizkon Ltd before the merits of the above claim was determined by the District Court and the Court of Appeal (see paragraph 13 above). However, it appears that there was no follow-up to that agreement and that the State's ownership was formally registered only after a second contract was signed between the same parties following the Court of Appeal's judgment (see paragraphs 16, 17 and 19 above). Furthermore, the examination of the case in the Court of Cassation, which took place after the State had already acquired the right of ownership, was limited only to points of law and did not even touch upon this issue.

44. In any event, the Court notes that neither the plaintiff nor the courts relied on Article 225 of the Civil Code when asking and deciding to terminate the applicants' right of use. In fact, this was done with reference to the provisions of the Civil Code, namely Articles 218 and 220, which regulated the question of forced expropriation of land. Thus, the Government's allegation that the applicants' right of use was lawfully terminated under Article 225 of the Civil Code is not supported by the circumstances of the case.

45. The Court observes that, as already indicated above, the applicants' right of use in respect of the flat was terminated by the courts with reference to Articles 218 and 220 of the Civil Code. The Court notes, however, that these Articles spoke solely of the possibility of terminating the right of ownership in respect of land and contained no mention whatsoever of terminating the right of use of accommodation (see paragraph 24 and 25 above). Thus, it appears that the applicants' right of use was terminated with reliance on legal rules which were not applicable to their case. The Court considers that such termination of their right of use was bound to result in an unforeseeable or arbitrary outcome and must have deprived the applicants of effective protection of their rights. It therefore cannot but describe the interference with the applicants' possessions on such a legal basis as arbitrary and unlawful (see, *mutatis mutandis*, *Minasyan and Semerjyan*, cited above, § 75-76).

46. This conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52, and *Iatridis v. Greece* [GC], no. 31107/96, § 62, ECHR 1999-II).

47. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. The applicants further complained that the deprivation of their possessions amounted also to a violation of Article 8 of the Convention and

that the court proceedings were conducted in violation of the fair trial guarantees of Article 6 of the Convention.

49. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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. The parties' submissions

1. The applicants

(a) Damage

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

52. In view of the above, the applicants argued that the value of their right of use was to be calculated using the method of capitalisation of income and by applying the formula prescribed by the amended Article 225 of the Civil Code. Based on such a calculation, the applicants each claimed AMD 7,560,000 in respect of pecuniary damage which, according to the applicable exchange rate, was equivalent to EUR 16,666.30.

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

(b) Costs and expenses

54. The first applicant also claimed EUR 100 for postal costs.

2. The Government

55. The Government claimed that the formula suggested by the applicants for the calculation of pecuniary damage was not applicable to their case, because the amendments to Article 225 of the Civil Code, which introduced the formula in question, entered into force only on 26 November 2005, that is after the circumstances of the present case.

56. The Government asked the Court to reject the applicants' claims for pecuniary and non-pecuniary damage and costs and expenses, because their rights guaranteed by Article 1 of Protocol No. 1 had not been violated.

2. The Court's assessment

57. The Court considers that the question of the application of Article 41 is not ready for decision. The question must accordingly be reserved and the further procedure fixed with due regard to the possibility of agreement being reached between the Government and the applicants.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection concerning the incompatibility of the applicants' complaint under Article 1 of Protocol No. 1 with the provisions of that Article and to dismiss it;

2. *Declares* the complaint concerning the deprivation of the applicants' possessions under Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds* that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicants to submit, within the three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 20 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President