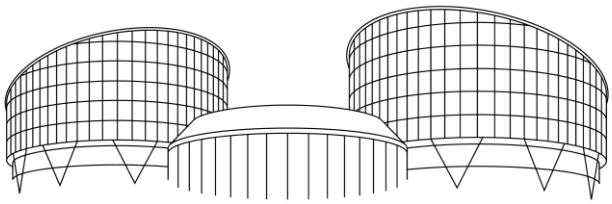

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BOYAJYAN v. ARMENIA

(Application no. 38003/04)

JUDGMENT

STRASBOURG

22 March 2011

FINAL

22/06/2011

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

In the case of Boyajyan v. Armenia**,**

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 15 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 38003/04) 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 an Armenian national, Ms Roza Boyajyan ("the applicant"), on 8 October 2004.

2. 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 19 September 2006 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 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1935 and lives in Yerevan.

5. Starting from 1971 the applicant made various deposits in Soviet roubles with the Armenian branch of the USSR Savings Bank. These included:

(a) sums of money deposited on three deposit accounts (*ժամկետային ավանդ*) opened in 1973-1974 amounting to a total of 19,795.30 roubles as

of 1 January 1993, sums of money deposited on three 40% offset accounts (*40% փոխհատուցման հաշիվ*) opened in 1991 amounting to a total of 8,264 roubles as of 1 January 1993, and sums of money deposited on three on-demand accounts (*ցպահանջ հաշիվ*) opened in 1971, 1977 and 1988, the latter in the name of the applicant's grand-daughter, amounting to a total of 29,384.81 roubles as of 1 September 1993;

(b) 23 State internal premium bonds of 1982 (*1982 թ. պետական ներքին շահող փոխառության պարտատոմսեր*), each worth 50 roubles;

(c) four special-purpose State interest-free bonds of 1990 (*1990 թ. պետական նպատակային անտոկոս փոխառության պարտատոմսեր*): one worth 2,500 roubles entitling the applicant to receive a video recorder, one worth 1,000 roubles entitling her to receive a television set, and two others each worth 200 roubles entitling her to receive two sewing machines;

(d) 11 certificates of the USSR Savings Bank obtained in 1990 (*ԽՍՀՄ խնայբանկի սերտիֆիկատ*), each worth 1,000 roubles.

6. On 5 July 1993 the Government decided to restructure the Armenian branch of the USSR Savings Bank into the State Specialised Savings Bank of Armenia (hereafter, the Savings Bank). Later that month the Soviet rouble was withdrawn from circulation.

7. On 22 November 1993 the Armenian currency, the dram, was introduced, at a rate of 200 roubles to 1 dram.

8. On 26 April 2002 the Convention and Protocol No. 1 entered into force in respect of Armenia.

9. On 21 June 2004 the applicant applied to the Savings Bank seeking to recover her deposits.

10. By a letter of 21 July 2004 the Savings Bank informed the applicant that:

> "...the question of compensation for deposits made with the Savings Bank in former USSR roubles prior to 1 January 1993 is currently at the centre of attention of the National Assembly and the Government of Armenia. The Decision no. 835 of the Government of Armenia of 8 September 2001, which states that '... the Republic of Armenia assumes responsibility for the future possible indexation of deposits made by citizens with the Savings Bank CJSC in former USSR roubles prior to the currency conversion of 1993', serves as proof of this.
>
> As to your inquiry concerning the former USSR State internal premium bonds of 1982 and the certificates, we would inform you that all operations in their respect were stopped by the decision of the Supreme Soviet of Armenia of 10 June 1993, until a final decision is adopted concerning their repayment by the CIS member States. However, no decision or directive was adopted thereafter.

> As to the redemption of the former USSR special-purpose interest-free bonds given to the Armenian population in 1990, which were planned to be converted into household and domestic goods starting from 1993, this was found not to be feasible by Decree no. 377 of the Government of Armenia of 29 June 1992.
>
> For purposes of compensation the Government of Armenia, in its Decree no. 345 of 5 July 1993, decided to index the nominal value of the above [special-purpose interest-free] bonds by 300% and to open a deposit account or to make payments by 1 August 1993, which you failed to do within the said period.
>
> As you see, in the above circumstances the Savings Bank has no obligation to make payments in respect of the deposits and securities.
>
> The Savings Bank will be able to serve citizens only after a decision is taken by the Government of Armenia concerning the choice of possible compensation alternatives for the deposits and the above securities and their payment."

11. On 4 August 2004 the applicant lodged a claim with the Kentron and Nork-Marash District Court of Yerevan against the Government, seeking to recover her deposits and securities made with the Savings Bank. She requested, in particular, that her savings be returned to her in the currency in which the deposits were made.

12. On 6 August 2004 the Kentron and Nork-Marash District Court of Yerevan refused to admit the applicant's claim on the ground that:

> "... the dispute is not subject to court examination, since the National Assembly and the Government of Armenia have not yet adopted relevant laws and decrees concerning the procedure for returning to citizens their deposits made with the Savings Bank of Armenia."

13. On 13 August 2004 the applicant lodged an appeal on points of law, arguing that the reasons for the refusal to admit her claim were groundless and seeking to reverse the decision of the District Court.

14. On 27 August 2004 the Court of Cassation decided to dismiss the applicant's appeal. In doing so, the Court of Cassation referred to the grounds for the refusal to admit the applicant's claim and found the District Court's decision to be well-founded.

II. RELEVANT DOMESTIC LAW

A. Domestic provisions related to the question of recovery of savings

1. Government Decree no. 377 of 29 June 1992 on the Repurchase of the State Special-Purpose Interest-Free Bonds Sold to the Population in 1990

15. Pursuant to this Decree the Government decided that, since the redemption of these bonds was not feasible due to the lack of goods, the repurchased bonds would be converted into deposit accounts.

2. Decision of the Supreme Soviet of Armenia of 10 June 1993 on the State Specialised Savings Bank of Armenia

16. Under Paragraph 1 the Government was allowed to restructure the Armenian branch of the USSR Savings Bank into the State Specialised Savings Bank of Armenia.

17. Under Paragraph 2 the Republic of Armenia guaranteed the preservation and the repayment of deposits and other values made with the Savings Bank of Armenia.

18. Under Paragraph 3 the Government was asked to come up with proposals on indexation of savings and other values made with the Armenian branch of the USSR Savings Bank within one month.

19. According to Paragraph 4, all transactions in respect of 1982 State internal premium bonds and USSR Savings Bank certificates were to be stopped until a final decision was taken on them by the member states of the Commonwealth of Independent States.

3. Government Decree no. 345 of 5 July 1993 on the Restructuring of the Armenian Republican Branch of the USSR Savings Bank into the State Specialised Savings Bank of Armenia

20. Under Paragraph 1 the Armenian branch of the former USSR Savings Bank was restructured into the State Specialised Savings Bank of Armenia. The Savings Bank of Armenia was the legal successor of the Armenian branch of the former USSR Savings Bank.

21. Under Paragraph 2 the Government guaranteed the preservation and the repayment of the deposits and other values made with the Savings Bank of Armenia.

22. Under Paragraph 4 the following types of savings were indexed: (a) the amounts left in the Savings Bank's deposit accounts as of 1 January 1993 by 100%; (b) the amounts left in the Savings Bank's special deposit accounts as of 1 January 1993 by 100%; (c) the nominal value of the

1990 special-purpose State interest-free bonds by 300%; and (d) treasury bonds owned by the population by 200%.

4. Government Decree no. 835 of 8 September 2001 on Privatisation of the Savings Bank of Armenia Closed Joint-Stock Company

23. Pursuant to this Decree the Savings Bank of Armenia was sold to two private companies. The Ministry of Finance and Economy was instructed to conclude a privatisation agreement with the buyers, which was to contain guarantees on behalf of the Republic of Armenia. In particular, the Republic of Armenia was to assume responsibility for the future possible indexation of deposits made by citizens with the Savings Bank CJSC in former USSR roubles prior to the currency conversion of 1993.

5. The 2006 State Budget Act (in force from 1 January 2006)

24. Section 10 approved the 2006 annual programme for compensation of monetary deposits made with the Armenian branch of the USSR Savings Bank before 10 June 1993, which featured as an Annex to this Act.

25. Section 13 prescribed that the compensation activities of monetary deposits made with the Armenian branch of the USSR Savings Bank before 10 June 1993 shall be organised by the Armenian Government. The compensation of the said deposits was to be implemented on the basis of a State mid-term expenditure programme approved by the Armenian Government, within the limits of the budgetary allocations envisaged for that purpose as a separate budget line in each year's State budget. The Armenian Government, based on the above-mentioned 2006 annual programme, was to develop the procedure for such compensation and to specify the lists of individuals enjoying a priority right to receive such compensation.

6. Government Decree no. 352-N of 16 March 2006 Approving the Procedure for Compensation of Monetary Deposits Made with the Armenian Republican Branch of the USSR Savings Bank Before 10 June 1993

26. Pursuant to Paragraph 1, those depositors, who are members of families which have been receiving family allowance continuously from 1 July 2005 until 1 April 2006, are entitled to receive compensation for their deposits.

27. Pursuant to Paragraphs 5 and 6, persons mentioned in Paragraph 1 were to submit an application in order to receive compensation. The deadline for submitting applications could not be later than 12 April and was to expire on 12 May 2006.

28. Pursuant to Paragraph 27, the depositors' right to claim compensation from the Republic of Armenia arises in such budgetary year (a) in respect of which an expenditure programme for payment of compensation prescribed by this procedure is envisaged by the State Budget Act; and (b) the depositor in question is included in the payment schedule for the year in question.

B. Domestic provisions related to the question of access to court

The Code of Civil Procedure

29. According to Article 91 §§ 1 (1) and 4, the judge refuses to admit a claim if, *inter alia*, the dispute is not subject to court examination. The decision refusing to admit a claim can be contested through cassation proceedings within three days from the date of its receipt.

30. According to Article 228 (1), as in force at the material time, a judicial act could be reviewed on the ground of newly discovered circumstances which have vital importance for the case and which the parties were not and could not be aware of.

31. According to Article 239, as in force at the material time, the decision of the Court of Cassation entered into force from the moment of its delivery and was not subject to appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant complained that she had been denied access to court in violation of the guarantees of Article 6 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

1. Exhaustion of domestic remedies

33. The Government submitted that the applicant had failed to exhaust the domestic remedies. In 2004 she was indeed denied access to court because there were no relevant legal acts at the material time which would

regulate the contested issues. However, on 16 March 2006 the Government adopted Decree no. 352 which prescribed the procedure for compensation for deposits and entered into legal force on 6 April 2006. Thus, it was open to the applicant, following the entry into force of this Decree, to request the courts to reopen her case on the ground of newly discovered circumstances pursuant to Article 228 (1) of the Code of Civil Procedure.

34. The applicant submitted that the decision of the Court of Cassation of 27 August 2004 was final and not subject to review.

35. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 85, *Reports of Judgments and Decisions* 1998-VIII).

36. Furthermore, under Article 35 the existence of remedies which are available and sufficient must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 39, Series A no. 77, and *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV).

37. Turning to the circumstances of the present case, the Court notes that the applicant's claim was not admitted by the Kentron and Nork-Marash District Court of Yerevan on 6 August 2004 on the ground that it was not subject to court examination, pursuant to Article 91 of the Code of Civil Procedure, because of the lack of relevant procedures. According to the above Article 91, a decision refusing to admit a claim could be contested before the Court of Cassation. The applicant availed herself of that possibility by lodging an appeal with that court, which was dismissed on 27 August 2004. This decision was final and not subject to appeal. Thus, the applicant had recourse to all the ordinary remedies available to her under the Armenian procedural law at the relevant time.

38. As regards the Government's claim that the applicant should have tried to reopen her case following the adoption of Government Decree no. 352-N which introduced compensation procedures, the Court, first of all, points out its extensive case-law to the effect that an application for retrial or similar extraordinary remedies cannot, as a general rule, be taken into account for the purposes of applying Article 35 § 1 of the Convention (see, for example, *R. v. Denmark*, no. 10326/83, Commission decision of 6 September 1983, Decisions and Reports 35, p. 218; *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002; and *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004). Nor were there, in the Court's opinion, any special circumstances in the present case requiring the applicant to avail herself of that extraordinary remedy. In particular, Article 228 (1) of the Code of Civil Procedure prescribed the possibility of reopening a case on the ground of newly discovered circumstances. This notion implied circumstances which existed at the material time but were unknown to the parties. The Court notes that the applicant's case was examined in August 2004, while the above Government Decree was adopted only on 16 March 2006. Thus, the Decree in question could not be considered as a "newly discovered circumstance" within the meaning of the above Article 228 (1) and any attempt to reopen the case on the ground suggested by the Government would have been futile. It follows that the Government's objection as to non-exhaustion must be dismissed.

2. Conclusion

39. The Court concludes 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.

B. Merits

1. The parties' submissions

40. The Government submitted that the denial of access to court to the applicant was compatible with the requirements of Article 6. In particular, the applicant applied to the courts on 4 August 2004, that is at the time when the Government was already in the process of examining the possibilities of recovering the deposits made with the Savings Bank and, in particular, developing the above Government Decree no. 352-N. Furthermore, an ad hoc committee was set up at the National Assembly by its decision of 10 September 2003 which was also entrusted with the examination of that issue. As a result, the law on the 2006 State budget was enacted, which entered into force on 1 January 2006, and Government

Decree no. 352-N was adopted on 6 April 2006, which prescribed the procedure and conditions for providing compensation to the depositors. This entire process was public and individuals were able to be informed about the joint measures taken by the Government and the National Assembly. Thus, the examination of a claim by a single person by the courts, in circumstances where a common solution was still in the process of being developed, would have had a negative impact on the entire process. In particular, all the individuals who had deposits with the Savings Bank, whose number exceeded 400,000, would have started lodging similar claims with the courts. The courts were therefore refusing to admit such claims for examination on the merits until the relevant legal basis for the recovery of deposits was created in April 2006.

41. The applicant claimed that she had been denied access to court in violation of the guarantees of Article 6. The courts failed to conduct any proceedings, to hold a hearing and to examine her case on the merits, despite the fact that her claim for recovery of her deposits and for payment of damages was of a civil nature and was subject to examination by the courts.

2. The Court's assessment

42. The Court reiterates that the right to a court, of which the right of access constitutes one aspect, is not absolute but may be subject to limitations in the form of regulation by the State. In this respect the State enjoys a certain margin of appreciation. Nevertheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 59, Series A no. 316-B; *Khalfaoui v. France*, no. 34791/97, § 35, ECHR 1999-IX, and *Papon v. France*, no. 54210/00, § 90, ECHR 2002-VII).

43. In the present case, the applicant's claim for recovery of her deposits made with the Savings Bank was not examined by the domestic courts on the ground that no laws and decrees had yet been enacted by the National Assembly and the Government of Armenia. The Court shares the Government's position as regards the pursuit of a legitimate aim by this limitation. It notes that the applicant's claim arose as a consequence of the collapse of the Soviet rouble and the total withdrawal of that currency from circulation without solving the issue of individual savings in Soviet roubles. Armenia was faced with an immense task of building its own monetary system and addressing the problems caused by the collapse of the previous monetary system. Indeed, the examination of a claim of a single individual,

regardless of its outcome, could have had a negative impact on the process of recovery of deposits as a whole, a problem that required a comprehensive rather than an individual solution in view of the high number of persons affected. The Court therefore considers that the refusal to examine the applicant's claim on the above-mentioned grounds pursued a legitimate aim, namely ensuring a smooth and effective implementation of the recovery process.

44. As regards the proportionality of this limitation, the Court observes that this was only a temporary measure. The domestic courts refused to examine the applicant's claim until the relevant procedures for recovery of deposits were adopted by the State. The Court notes in this respect that the question of recovery of savings has been at the centre of attention of the authorities for a number of years and gradual steps have been taken to solve the issue, including the adoption in 2006 of a procedure providing a possibility for the most vulnerable categories of depositors to claim compensation for devaluation of their savings (see paragraphs 26-28 above). In view of the above, the Court considers that the limitation on the applicant's access to court was not disproportionate.

45. There has accordingly been no violation of Article 6 of the Convention.

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

46. The applicant complained that she was unable to recover her savings, including deposits and securities, made with the Savings Bank and invoked 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."

Admissibility

1. The parties' submissions

(a) The Government

47. The Government submitted that the applicant had failed to exhaust the domestic remedies as required by Article 35 of the Convention. First of all, her claim lodged with the domestic courts was directed against the Government but not the Savings Bank of Armenia. However, it was the latter and not the former which was the legal successor of the Armenian branch of the USSR Savings Bank and bore all the ensuing obligations. Secondly, the applicant contested the decision of the Kentron and Nork-Marash District Court only on the ground of a procedural but not a substantive violation of the law, thereby failing to raise in substance any of her complaints under Article 1 of Protocol No. 1. Finally, the claim lodged by the applicant with the District Court was different in substance from the complaints which she raised before the Court.

48. The Government further submitted that it was the Savings Bank and not the State which bore the responsibility to return the deposits. In 1996 the State Specialised Savings Bank of Armenia was restructured into the Savings Bank of Armenia Joint-Stock Company which, in its turn, was privatised in 2001. Thus, from 2001 the Savings Bank was a private company and the State bore no responsibility for its relations with private individuals, including its obligation to return the deposits. The State had only assumed the responsibility for the future possible indexation of the deposits and acted as a guarantor of their repayment. For that purpose on 5 July 1993 the Government adopted Decree no. 345, whereby it indexed various types of savings deposited with the Savings Bank. The Government further introduced a monetary reform in November 1993, converting the former USSR roubles into Armenian drams at a rate of 200/1 and thereby secured the repayment of the deposits. Thus, any depositor, including the applicant, is entitled to receive his deposits at any point at the above-mentioned rate. Furthermore, bearing in mind that the depositors might suffer big losses as a result of the indexation, the Government, by adopting on 16 March 2006 decree no. 352-N, started to provide compensation to the depositors in certain order of priority.

49. The Government lastly claimed that the solution given to the problem, as described above, was not much different from the experience of other former USSR republics.

(b) The applicant

50. The applicant submitted that she had exhausted all the domestic remedies. First of all, the Government in its Decree no. 345 of 5 July 1993 had guaranteed the preservation and the restoration of deposits and other values made with the Savings Bank of Armenia. Furthermore, in its Decree no. 835 of 8 September 2001 the Government had assumed the obligation to index the deposits made with the Savings Bank. As regards the 1982 State internal premium bonds and the Savings Bank certificates, all transactions in their respect had been suspended by the decision of the Supreme Soviet of 10 June 1993. As regards the 1990 special-purpose State interest-free bonds, their redemption was found not to be feasible by Government Decree no. 377 of 29 June 1992 and their value was indexed by 300% by Government Decree no. 345 of 5 July 1993. In view of the above, the Savings Bank had no obligations in respect of the deposits and securities and it was the Government which bore such obligations and was the relevant respondent. Moreover, the Savings Bank's powers and capacity to return the deposits and securities was restricted by the above Government decrees.

51. Secondly, there was no need to raise in her appeal to the Court of Cassation any arguments concerning a substantive violation of the law since her claim had not been examined on the merits.

52. Finally, her claims lodged with the domestic courts fully reflected the substance of her complaints raised before the Court.

2. The Court's assessment

53. The Court does not find it necessary to examine the entirety of the arguments advanced by the parties since this complaint is in any event inadmissible for the following reasons.

(a) As regards the applicant's deposits

54. The Court observes that the sums of money actually deposited by the applicant with the Savings Bank, whatever their real current value, undoubtedly constitute “possessions” within the meaning of Article 1 of Protocol No. 1 (see *Gayduk and Others v. Ukraine* (dec.), nos. 45526/99, 46099/99, 47088/99, 47176/99, 47177/99, 48018/99, 48043/99, 48071/99, 48580/99, 48624/99, 49426/99, 50354/99, 51934/99, 51938/99, 53423/99, 53424/99, 54120/00, 54124/00, 54136/00, 55542/00 and 56019/00, ECHR 2002-VI (extracts)). It notes, however, that the main purpose of her application is to seek recovery of these sums with their purchasing power maintained. The same follows from her claim lodged with the domestic courts, in which she sought to have her deposits returned in Soviet roubles, a currency which no longer existed, thereby attempting to recover the original value of her savings.

55. In this respect, the Court notes that the applicant's savings lost their purchasing power due to the drastic depreciation of the Soviet rouble and inflation. It reiterates, however, that Article 1 of Protocol No. 1 does not impose any general obligation on States to maintain the purchasing power of sums deposited with financial institutions through the systematic indexation of savings (see *Appolonov v. Russia* (dec.), no. 67578/01, 29 August 2002, and *Gayduk and Others*, cited above). As to the Government's responsibility assumed under Decree no. 835 of 8 September 2001, this concerned the future possible indexation of deposits and depended on the introduction of the relevant compensation procedures and the availability of budgetary allocations for that purpose. It therefore did not entitle the applicant to any specific amount of money at the material time and the proceedings instituted by her did not concern any "existing possessions" that belonged to her. In view of the above, Article 1 of Protocol No. 1 is not applicable in the instant case.

56. This part of the application is accordingly incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

(b) As regards the applicant's securities

57. The Court reiterates at the outset that securities having an economic value can be regarded as "possessions" (see *Jasinskij and Others v. Lithuania*, no. 38985/97, Commission decision of 9 September 1998). The applicant, at the time when she acquired the State internal premium bonds of 1982 and the USSR Savings Bank certificates, became entitled to repayment by the Soviet Government of the principal in respect of the bonds, provided there was no positive outcome of the lottery in the meantime, and of the principal and the accrued interest in respect of the certificates. As regards the special-purpose State interest-free bonds of 1990 these, in addition to having a certain monetary denomination, entitled the applicant to receive various household and domestic goods without any additional payments. The Court considers that such bonds and certificates can indeed be considered as assets giving rise to a right of ownership (ibid.).

58. The Court points out, however, that Protocol No. 1 entered into force in respect of Armenia only on 26 April 2002 and, in accordance with the generally recognised rules of international law, its provisions do not bind Armenia in relation to any act or fact which took place or any situation which ceased to exist before that date (see, among other authorities, *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-...).

59. As regards the State internal premium bonds of 1982 and the USSR Savings Bank certificates, the Court notes that the Supreme Soviet of Armenia, in its decision of 10 June 1993, while guaranteeing the preservation and repayment of the citizens' deposits and other values made with the Savings Bank, nevertheless decided to stop all operations in respect

of these securities (see paragraph 19 above). As regards the special-purpose State interest-free bonds of 1990, the Court notes that their conversion into household and domestic goods was found not to be feasible by Government Decree no. 377 of 29 June 1992 (see paragraph 15 above). The interference with the applicant's possessions therefore took place on those dates, that is long before the entry into force of Protocol No. 1 in respect of Armenia.

60. This part of the application is accordingly incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the denial of access to court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 22 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Ziemele is annexed to this judgment.

J.C.M.
S.Q.

CONCURRING OPINION OF JUDGE ZIEMELE

I fully share the view of the Chamber in this case. I would like to add to the reasoning an aspect which, in my view, is of fundamental importance even though the respondent State did not fully develop it.

The case has arisen in the context of the demise of the Soviet Union, a highly centralized State-run economy at the time. The Republic of Armenia is one of the successor States. The applicant had made deposits in Soviet roubles with the Armenian branch of the USSR Savings Bank on several occasions in the 1970s and 80s. After the demise of the Soviet Union and the creation of the State of Armenia, the applicant, like many other former Soviet citizens in different corners of the former USSR, wanted to recover those deposits. The Soviet rouble was withdrawn from circulation in 1993 by unilateral decision of the Russian Federation. This led Armenia to introduce its own currency and build its own monetary system. Thus, in the early years of independence, to the fears about the possible unavailability of the currency was added the reality that that currency was no longer legal tender.

This is one of the many typical problems that arise when State succession takes place. The Court has had to deal with problems linked to State succession before, albeit in the somewhat different contexts of the disappearance of the former Socialist Federal Republic of Yugoslavia ("SFRY") and German Democratic Republic. In these cases, the Court left a considerable margin to successor States to deal with the problems inherent in situations of State succession. In the *Kovacic v. Slovenia* case, which concerned the break-up of the SFRY, its banking system and the redistribution of liability for old foreign-currency savings among the successor States of the SFRY, the Grand Chamber agreed with the Parliamentary Assembly of the Council of Europe that "the matter of compensation for so many thousands of individuals must be solved by agreement between successor States" (*Kovacic and Others v. Slovenia*, nos. 44574/98, 45133/98 and 48316/99, [GC], judgment of 3 October 2008, § 256).

Experts in the area of State succession have observed, concerning the former USSR, that "A Treaty of Economic and Monetary Union was ... signed by eight republics (without Ukraine) [of the former USSR] on 18 October 1991 and negotiations continued up until the Treaty of Minsk in December creating the Commonwealth of Independent States (CIS), with a view to setting up a monetary union" (G. Burdeau, "Money and State Succession in Eastern Europe", in B. Stern (ed.), *Dissolution, Continuation and Succession in Eastern Europe*, Kluwer Law International, 1998, p. 48). The initial political will was not, however, accompanied by appropriate economic conditions and thus neither the 1991 agreement nor subsequent

agreements with some of the successor States to the former Soviet Union, including Armenia, were put into practice. It was further observed that "the Russian monetary reform of July 1993, which led to the nullification of a large number of the roubles in circulation without the agreement of the other successor States concerned (see paragraphs 6 – 7) [..] was criticized" at the time in the Russian Federation. "On the other hand, no open criticism seems to have been made by the other republics from an international law perspective" (ibid., p. 53).

Be that as it may, it is clear that the new States were faced with immense difficulties in separating from such a centralised economy as the Soviet one. There was no proportionate division of Soviet funds among successor States. This is probably a more dramatic issue in the former Soviet context since the deposits and monetary reserves and so on were essentially centralised. In such circumstances, and despite the best intentions of the Armenian State, it would be very difficult for the Court to rule through the doors of the Convention that Armenia is responsible for the deposits in Soviet roubles or that a particular compensation ought to have been provided instead. That does not mean however that the States concerned have done everything possible under international law to settle pending issues.