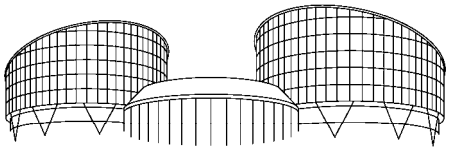

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MASHINYAN AND RAMAZYAN v. ARMENIA

(Application no. 65124/09)

JUDGMENT

STRASBOURG

14 February 2019

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

In the case of Mashinyan and Ramazyan v. Armenia,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Armen Harutyunyan, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 22 January 2019,

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

PROCEDURE

1. The case originated in an application (no. 65124/09) 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 five Armenian nationals, Mr Rusayel Mashinyan, Ms Zhenik Mashinyan, Mr Shakar Mashinyan, Mr Varazdat Mashinyan and Ms Liana Ramazyan ("the applicants"), on 2 December 2009.

2. The applicants were represented by Mr K. Tumanyan, a lawyer practising in Vanadzor. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. On 18 March 2014 notice of the complaints concerning the deprivation of property and the right to a fair trial was given to the Government; the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants live in Shnogh village.

A. Background to the case

5. In the 1970s a copper-molybdenum deposit ('Teghout') was discovered about four and six km away from the villages of Teghout and Shnogh respectively, in the Lori Region.

6. In 2001 a private company, Armenian Copper Programme CJSC, was granted a mining licence for the exploitation of the Teghout copper-molybdenum deposit for a period of twenty-five years.

7. On 1 November 2007 the Government adopted Decree no. 1279-N approving the designation of territories situated within the administrative boundaries of the rural communities of Shnogh and Teghout in the Lori Region as expropriation zones, to be taken for State needs, thus changing the land use category. According to the decree, Armenian Copper Programme CJSC or Teghout CJSC, founded by the former for the purpose of the implementation of the Teghout copper-molybdenum deposit exploitation project, were to acquire the units of land listed in its annexes.

8. The plot of land belonging to the applicants was listed among the units of land falling within these expropriation zones.

B. Proceedings concerning the expropriation of the applicants' property

9. The applicants, a family of five, live in Shnogh village and earn their living from agriculture. They jointly owned a plot of arable land in the village measuring 1.622 ha. The land was used for growing crops for the family and feeding their livestock.

10. On an unspecified date Teghout CJSC addressed a letter to the applicants containing an offer to buy their plot of land for 818,000 Armenian drams (AMD, approximately 1,780 euros (EUR)) plus an additional 15% as required by law, making the final offer AMD 940,700 (approximately EUR 2,045).

11. The applicants did not reply to the letter, not being satisfied with the amount of compensation offered.

12. On 12 May 2008 Teghout CJSC lodged a claim against the applicants, seeking to oblige them to sign an agreement for their property to be taken for State needs. The company based its claim, *inter alia*, on a valuation report prepared at its request by Oliver Group LLC, a licensed valuation company. According to the report, the market value of the applicants' plot of land was estimated at AMD 818,000 (approximately EUR 1,780).

13. In the proceedings before the Lori Regional Court, the fourth applicant represented the other applicants and argued that the market value of their land had been underestimated. He requested additional time to be able to submit an alternative valuation report.

14. It appears that the applicants were unable to obtain a valuation of their property by another company. They claim that no other valuation company was willing to make an independent assessment of the market value of their land.

15. During the proceedings Teghout CJSC submitted another valuation of the applicants' property, stating that Oliver Group LLC had prepared a corrected report according to which the market value of the property was AMD 900,000 (approximately EUR 1,960). The final amount of compensation, including the additional 15% required by law, would thus be equal to AMD 1,035,000 (approximately EUR 2,250).

16. On 26 September 2008 the Regional Court granted Teghout CJSC's claim, awarding the applicants a total of AMD 1,035,000 in compensation.

17. The applicants lodged an appeal complaining, *inter alia*, that the market value of their land had been seriously underestimated and that the amount of compensation offered to them was inadequate. They further argued that the fact that Oliver Group LLC had submitted two different valuation reports during the proceedings raised doubts as to the credibility of its reports, and that the court should have initiated an independent valuation of their property.

18. On 29 January 2009 the Civil Court of Appeal upheld the Regional Court's judgment, finding, *inter alia*, that the market value of the property to be taken for State needs had been correctly estimated, on the basis of the valuation report contained in the case file.

19. The applicants lodged an appeal on points of law. They argued, *inter alia*, that the Regional Court had failed to order an independent valuation of the property, despite having the power to do so under the law. They submitted that they had disagreed with the valuation report submitted by the other party to the proceedings, which was moreover not an expert opinion and therefore could not be admitted as evidence.

20. On 24 June 2009 the Court of Cassation declared the applicants' cassation appeal inadmissible for lack of merit.

II. RELEVANT DOMESTIC LAW

A. The Constitution of 1995 (following the amendments introduced on 27 November 2005 with effect from 6 December 2005)

21. According to Article 19, everyone has the right to a public hearing of his case by an independent and impartial court within a reasonable time, in conditions of equality and with respect for all fair trial requirements, in order to have his violated rights restored, as well as the validity of the charge against him determined.

22. According to Article 31, everyone shall have the right to dispose of, use, manage, and bequeath his property in the way he sees fit. No one can be deprived of his property save by a court in cases prescribed by law. Property can be expropriated for the needs of society and the State only in exceptional cases of paramount public interest, in a procedure prescribed by law, and with prior equivalent compensation.

B. The Code of Civil Procedure (in force from 1999)

23. According to Article 6, civil proceedings shall be adversarial and shall be conducted with respect for equality of arms.

24. Article 53 § 2 of the Code provides that the court shall consider no piece of evidence as already established.

25. According to Article 60 § 1, in order to clarify issues requiring specialised knowledge which arise during the examination of a case, the court can order a forensic examination upon application by a party (parties) or of its own motion.

26. Article 60 § 6 of the Code provides that the court must warn the expert about criminal liability for submission of an obviously false conclusion.

27. According to Article 61, the participants in the proceedings are entitled to be present at the forensic examination, save in cases where their presence could hinder the regular work of the expert.

C. The Law on Alienation of Property for the Needs of Society and the State (in force from 30 December 2006)

28. According to section 3 § 1, the constitutional basis for alienation of property for the needs of society and the State is the prevailing public interest.

29. Section 3 § 2 provides that the constitutional requirements for alienation of property for the needs of society and the State are the following:

(a) alienation must be carried out in accordance with a procedure prescribed by the law,

(b) prior adequate compensation should be provided for property subject to alienation.

30. According to section 4 § 1, the public interest must prevail over the interests of the owner of property subject to alienation, and alienation of that property must be essential to the implementation of what is in the public interest.

31. Section 4 § 2 provides that the prevailing public interest may pursue, *inter alia*, the implementation of mining projects which have important State or community significance. The aim of securing additional income for the State or community budget is not of itself a prevailing public interest.

32. According to section 11 § 1, adequate compensation should be paid to the owner of a property subject to alienation. The market value of the property plus an additional 15% is considered to be adequate compensation.

33. Section 11 § 3 provides that the determination of the market value of real estate and property rights in respect of real estate is carried out in

accordance with the procedure set out by the Law on Real Estate Valuation Activity.

D. The Law on Real Estate Valuation Activity (as in force at the material time)

34. According to section 8, valuation is obligatory in the event of alienation of immovable property for State or community needs.

35. Section 15 § 1 (1) provides that persons engaged in real estate valuation have the right to use independent methods of real-estate valuation in compliance with valuation standards.

E. Government Decree No. 1279-N of 1 November 2007 approving the designation as expropriation zones of certain territories situated within the administrative boundaries of the rural communities of Shnogh and Teghout in the Lori Region, within which territory may be taken for State needs, thus changing the category of land use (ՀՀ Կառավարության 2007 թ. նոյեմբերի 1-ի թիվ 1279-Ն որոշումը Հայաստանի Հանրապետության Լոռու մարզի Շնողի և Թեղուտի գյուղական համայնքների վարչական սահմաններում որոշ տարածքներում բացառիկ՝ գերակա հանրային շահ ճանաչելու և հողերի նպատակային նշանակությունը փոփոխելու մասին)

36. For the purpose of the implementation of the Teghout copper-molybdenum deposit exploitation project, and with a view to building and operating a mining plant, the Government decided to approve expropriation zones in respect of agricultural land situated within the administrative boundaries of the rural communities of Shnogh and Teghout in the Lori Region to be taken for State needs, with a total area of 81,483 ha. According to the Decree, the public interest in the development of the economy and infrastructure and the interest in higher levels of production and export prevailed over the private interests of the proprietors.

THE LAW

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

37. The applicants complained under Article 1 of Protocol No. 1 to the Convention that the deprivation of their property did not satisfy the

requirement of lawfulness, did not pursue any public interest, and that the amount of compensation awarded was inadequate. In particular, they complained that the law was not sufficiently foreseeable, in that it did not specify the criteria for determining the market value of property to be taken for State needs.

38. Article 1 of Protocol No. 1 to the Convention 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. Admissibility

39. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

(a) The applicants

40. The applicants maintained that their expropriated land was their only source of income. They argued that the deprivation of their property did not satisfy the requirement of lawfulness, was not in the public interest, and the amount of compensation awarded was inadequate. As regards the requirement of lawfulness, they argued that the law was not sufficiently foreseeable in that it did not specify the criteria for determining the market value of property to be taken for State needs. The applicants denied that the expropriation of their land had been carried out on "public interest" grounds. They argued that it was manifestly unreasonable in the present case to rely on a "public interest" when the measure had an exclusively commercial purpose, taking into account that the mining project was being implemented by a private company which did not have any State participation.

41. The applicants further argued that the assessment of the market value of their land had been done by relying on a comparative method, which could not adequately reflect its true market value. Moreover, the sum that they had received in compensation was much lower than the cadastral value

of the expropriated land at the time the expropriation procedure was initiated, and was manifestly inadequate in relation to the actual value of the land in question. They referred to Government Decree No. 746 of 29 December 2003, according to which the cadastral value of land in the same zone as theirs amounted to AMD 222 per square metre.

(b) The Government

42. The Government maintained that the deprivation of the applicants' property had been "provided by law" and by "the general principles of international law". According to the domestic law, the determination of the market value of an item of real estate was to be carried out in accordance with the Law on Real Estate Valuation Activity, which was sufficiently precise as regards the definition and calculation of the due compensation for expropriation. As this Law had entered into force in 2005, it had been foreseeable to the applicants. Moreover, the expropriation of the applicants' land had been carried out in the public interest: it had pursued the legitimate aim of development of the economy and infrastructure and had been in the interest of higher levels of production and export. These aspects of the public interest had prevailed over the applicants' private interest. The fact that the expropriation of the applicants' land had been carried out by a private company did not by any means preclude the existence of public interest in the present case.

43. As to fair balance, the Government stressed that the expropriation of the applicants' land had struck a fair balance between the demands of the general interest of the public and the requirements of the protection of the applicants' property rights. The compensation paid to the applicants had been proportional to the aim pursued. The market value of the plot of land in question had been calculated by applying income and comparative methods. The comparative method took into account several factors influencing the market value of agricultural lands, such as property rights and restrictions; the appearance of the plot of land; the existence of any water supplies; the measurements, location and yield of the plot of land; existence of any transport access; and slope degree and rock content of the plot of land. The income method took into consideration the necessary expenses and the expected incomes to be produced by the growing of crops on the agricultural lands at issue. The average fertility rates were used for the calculation of the market value of the plot of land in question. Data from neighbouring and compatible plots of land not subject to expropriation for State needs were used in the market value assessment. Moreover, Government Degree No. 1746-N of 24 December 2003, which the applicants were apparently referring to, was not applicable to the determination of the cadastral value of agricultural lands.

44. The Government argued that the applicants had not in any way had an "individual and excessive burden" imposed on them. The applicants had

been given every chance, *inter alia*, to present other valuation reports, to submit applications or requests, and to lodge appeals. They had even been exempted from the payment of State tribute when applying to the Court of Appeal and the Court of Cassation. Their rights had been fully guaranteed, and the domestic proceedings and the expropriation of their land had been in full compliance with national legislation and the Convention. There was thus no violation of Article 1 of Protocol No. 1 to the Convention.

2. The Court's assessment

45. In the present case, it is not in dispute that there has been a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1. The Court must therefore ascertain whether the impugned deprivation was justified under that provision.

46. The Court reiterates that, to be compatible with Article 1 of Protocol No. 1, an expropriation measure must fulfil three conditions: it must be carried out "subject to the conditions provided for by law", which rules out any arbitrary action on the part of the national authorities, must be "in the public interest", and must strike a fair balance between the owner's rights and the interests of the community (see, among other authorities, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 94, 25 October 2012). The Court will thus proceed to examine whether those three conditions have been met in the present case.

(a) "Subject to the conditions provided for by law"

47. In the instant case it is not in dispute that the expropriation of the applicants' property was carried out on the basis of the Law on Alienation of Property for the Needs of Society and the State. Section 11 § 3 of that Law refers to the Law on Real Estate Valuation Activity which provides for the methods for real-estate valuations (see paragraphs 33-35 above).

48. The Court has already found in a similar case that the above-mentioned legal provisions were clear enough to enable applicants to foresee in general terms the manner in which the market value of their property would be assessed (see *Osmanyan and Amiraghyan v. Armenia*, no. 71306/11, § 58, 11 October 2018). For the Court it was not unreasonable that a modicum of choice of the methods to be used during a valuation is left to the valuer, who chooses an appropriate method in a particular situation, depending on the specificities of the real estate in question (ibid., § 57). As the applicants could challenge the report prepared by a valuer hired by the acquirer of their property, the Court finds that the applicants were afforded sufficient guarantees against arbitrariness. Consequently, the impugned expropriation may be regarded as having been carried out "subject to the conditions provided for by law".

(b) "In the public interest"

49. The Court reiterates that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than an international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make an initial assessment as to the existence of a matter of public concern warranting measures of deprivation of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation. Furthermore, the notion of the "public interest" is necessarily a broad one. In particular, a decision to enact laws expropriating property will commonly involve consideration of political, economic, and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Beyeler v. Italy* [GC], no. 33202/96, § 112, ECHR 2000-I; *Vistiņš and Perepjolkins*, cited above, § 106; see also *Osmanyan and Amiraghyan,* cited above, § 60).

50. The Government argued that the State needed to expropriate the applicants' land for the development of the economy and infrastructure as a result of the implementation of the Teghout copper-molybdenum deposit exploitation project. 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).

(c) Proportionality of the impugned measure

51. Article 1 of Protocol No. 1 requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, §§ 81-94, ECHR 2005-VI). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Stefanetti and Others v. Italy*, nos. 21838/10 and 7 others, § 66, 15 April 2014).

52. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants (see the recapitulation of the relevant principles in *Vistiņš and Perepjolkins*, cited above, §§ 110-14).

53. The applicants argued, relying on Government Decree No. 746 of 29 December 2003, that the compensation received was significantly lower than the cadastral value of their land, which they claimed to be AMD 222 per square metre (see paragraph 41 above). However, Government Decree No. 1746-N of 24 December 2003, which sets out the coefficients used for calculation of the cadastral value of land, and indeed lists the applicants'

village within the zone whose coefficient corresponds to the amount per square metre claimed by the applicants, explicitly states that this decree is not applicable to the determination of the cadastral value of agricultural land (see paragraph 43 above).

54. In the present case, it is not disputed that according to domestic law the applicants were entitled to full compensation consisting of the estimated market value of their property plus 15%. However, the courts determined the amount of compensation payable to the applicants solely on the basis of the valuation report prepared by Oliver Group LLC, which amended its initial assessment by submitting a corrected report during the proceedings. The applicants, despite having the opportunity under the law to submit an alternative evaluation report, appear in practice to have been deprived of such an opportunity, since other licensed valuers refused to perform another assessment. The courts did not exercise their discretion to order an expert examination to determine the real market value of the applicants' property, which the latter claimed had been seriously underestimated (see paragraphs 12-16 above).

55. The Court observes that, having used a comparative method of valuing real estate, the experts determined the market value of the applicants' plot of land by comparing it with the sale prices of other plots of land in the same expropriation zone. The Court is mindful of its above finding, namely that the relevant domestic provisions were sufficiently foreseeable in that a professional expert should legitimately have the freedom of choice of the appropriate real-estate evaluation method (see paragraph 48 above). However, in a situation where the market value of the applicants' land was determined on the basis of the sale prices of plots of land within the same area, it cannot be excluded that the applicants would not be able to acquire, or would at least experience serious difficulty in finding, equivalent land in another area not subject to expropriation with the amount of compensation received.

56. Without prejudice to the relevant domestic provisions and the margin of appreciation of the State in these matters, the Court considers that there may be situations where compensation representing the market price of the real estate in question, even with the addition of the statutory surplus, would not constitute adequate compensation for deprivation of property. In the Court's opinion, such a situation may arise in particular if the property the person was deprived of constituted his main if not only source of income and the offered compensation did not reflect that loss (see *Lallement v. France*, no. 46044/99, § 18, 11 April 2002).

57. In the present case, the applicants submitted that as a family unit they had depended economically on the land in question which had been their only source of income (see paragraph 40 above). This argument has not been refuted by the respondent Government (see paragraphs 42-44 above). This particular aspect, namely that in consequence of the

expropriation the applicants had lost their only source of income, was not taken into account by the domestic courts in their decisions on the amount of the compensation due. The courts decided, despite the circumstances, that the applicants should be provided with compensation which was determined in relation to the prices of real estate situated in the area subject to expropriation and the expected incomes. They did not address the issue whether the compensation granted would cover the applicants' actual loss involved in deprivation of means of subsistence or was at least sufficient for them to acquire equivalent land within the area in which they lived.

58. In view of the foregoing, the Court finds that the applicants had to bear an excessive individual burden. Accordingly, the impugned expropriation was in violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

59. The applicants complained under Article 6 § 1 of the Convention that their right to a fair trial had not been respected, since the courts had regarded the valuation report submitted by their opponent as established proof of the market value of their property, and they had had no opportunity to challenge it effectively. In particular, they argued that the courts had failed to exercise their statutory discretion to order a forensic examination to determine the real market value of the property, given that the applicants had not participated in the valuation process and had been unable to submit their objections.

60. The relevant parts of Article 6 read as follows:

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

61. Having regard to the facts of the case, the parties' observations and its decision finding a violation of Article 1 of Protocol No. 1 concerning the deprivation of the applicants' property, the Court considers that it has examined the main legal question raised in the present application. It concludes, therefore, that there is no need to give a separate ruling on the applicants' complaints under Article 6 (see, *mutatis mutandis*, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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. Damage

63. The applicants claimed EUR 93,631 in respect of pecuniary damage. According to the applicants, the claimed amount reflected the sale and rental prices of land within the same community in the same period. They took AMD 3,000 per square metre of land as a basis for calculation. The applicants also claimed EUR 3,000 (for Article 6 violation) and EUR 7,000 (for Article 1 of Protocol No. 1 violation) in respect of non-pecuniary damage.

64. The Government considered that the applicants had failed to submit any proof in support of their pecuniary damage claims, which were exaggerated. These claims should therefore be rejected in their entirety. As to the non-pecuniary damage, the Government considered that the amounts claimed were excessive and not supported by any documentary evidence.

65. Given the nature of the violation found, the Court finds that the applicants undoubtedly suffered some pecuniary and non-pecuniary damage (see, *mutatis mutandis*, *Moskal v. Poland*, no. 10373/05, § 105, 15 September 2009; and *Osmanyan and Amiraghyan*, cited above, § 75). In the particular circumstances of the present case, making an assessment on an equitable basis as is required by Article 41 of the Convention, the Court awards the applicants jointly EUR 14,000 to cover all heads of damage.

B. Costs and expenses

66. The applicants also claimed EUR 7,000 for the costs and expenses incurred before both the domestic courts and the Court.

67. The Government noted that the applicants had failed to submit any itemised documentation, as required by Rule 60 of the Rules of Court, and that therefore this claim should be rejected. In any event, the amount should be reduced.

68. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses for lack of adequate supporting documentation.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 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 rule separately on the communicated complaint under Article 6 of the Convention, and declares inadmissible the remainder of the application;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, EUR 14,000 (fourteen thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 14 February 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Deputy Registrar	Ksenija Turković President