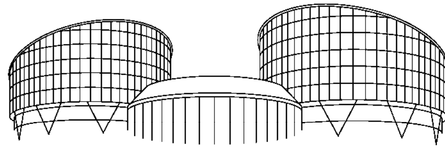

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TADEVOSYAN v. ARMENIA

(Application no. 69936/10)

JUDGMENT

STRASBOURG

16 May 2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Tadevosyan v. Armenia,

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

Aleš Pejchal, *President,*
Tim Eicke,
Jovan Ilievski, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 23 April 2019,

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

PROCEDURE

1. The case originated in an application (no. 69936/10) 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 Gayane Tadevosyan ("the applicant"), on 25 November 2010.

2. The applicant was represented by Mr A. Ghazaryan, a lawyer practising in Yerevan. 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 10 March 2016 notice of the complaint concerning the right to peaceful enjoyment of possessions was given to the Government and 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 applicant was born in 1966 and lives in Yerevan.

A. Background to the case

5. On 5 October 2001 the Government adopted Decree no. 950 by which it approved the procedure for the designation of plots of land and real estate situated within Yerevan as alienation zones, and established rules for the payment of compensation, price offers, and their implementation.

6. On 1 August 2002 the Government adopted Decree no. 1151-N by which it approved as an alienation zone real estate situated within the administrative boundaries of the Kentron District of Yerevan, containing land to be taken for State needs with a total area of 345,000 square metres.

7. A special body, the "Yerevan Construction and Investment Project Implementation Agency" (hereinafter "the Agency"), was set up to manage the implementation of the project.

8. The applicant owned a building measuring 240.2 square metres and had a lease on the plot of land on which it stood, measuring 437.8 square metres, situated in the centre of Yerevan. This property was included in the alienation zone of real estate to be taken for State needs. The applicant had acquired these pieces of property on 17 December 2003 for 1,000,000 Armenian drams (AMD, approximately 1,767 euros (EUR) at the material time).

B. The alienation of the applicant's property

9. On 7 September 2004 the applicant signed an agreement with the Agency by which she gave up her property for 265,020 US dollars (USD). The contract also provided for a financial incentive of USD 78,006 to be paid to the applicant. Thus, the final amount of the sale, including the additional 15% required by law, was equal to USD 394,479, of which the applicant received USD 355,031, as USD 39,447 was levied as income tax.

10. On 13 January 2006 the Anti-Corruption Department of the Prosecutor General's Office instituted criminal proceedings against Agency officials for deliberately overestimating the market value of the applicant's property and overpaying her. The applicant testified as a witness in the course of the investigation of the criminal case.

11. According to the applicant, at some point during the proceedings the head of the Agency demanded that she pay back USD 180,000, otherwise she could be held criminally liable for appropriation of State funds. On 3 February 2006 the applicant transferred AMD 75,820,000 (approximately EUR 133,958) to the Agency's account.

12. By a prosecutor's decision of 28 February 2006 the investigation of the case was terminated for absence of evidence that a crime had been committed. The relevant parts of this decision state the following:

> "...it has not been established that [a number of residents of the expropriation zone] had fraudulently misappropriated others' property ... and therefore their actions lack *corpus delicti*.
>
> As a result of the investigation of the criminal case it has not been established that the officials of [the Agency] have failed to perform properly their official duties or have used their official capacity to the detriment of the interests of their service..."

13. The applicant subsequently demanded that the Agency return the AMD 75,820,000 paid to its account. On 2 April 2007 she received a reply from the head of the Agency, stating that she had transferred the amount in question to the Agency's account without any documentary proof. According to the applicant, she contacted the Agency on two occasions

thereafter, demanding the return of money transferred to its account, but received no response.

C. The proceedings concerning restitution and reimbursement of income tax

14. On 30 October 2007 the applicant lodged a claim with the Kentron and Nork-Marash District Court of Yerevan, seeking to recover the money paid back to the Agency, the amount of income tax collected from her, and damages for unlawfully retention of her assets. The applicant claimed that she had paid back part of the sales price received because she was confused as a result of her conversation with the head of the Agency.

15. In its reply the Agency claimed that, by paying back the amount in question, the applicant had in fact accepted that she had been overpaid and for that reason the criminal proceedings had been terminated. The Yerevan Mayor's office, which had been involved in the proceedings, submitted a similar argument to that of the Agency.

16. On 27 May 2008 the applicant withdrew her claim for damages.

17. On 16 July 2008 the Civil Court of Yerevan partially granted the applicant's claims. In doing so, it stated that the amount of AMD 75,820,000 was to be returned to the applicant since there was no legal basis for the Agency to keep that amount, on the ground that the decision to terminate the criminal proceedings confirmed that the applicant had not committed any illegal act.

18. Upon the Agency's appeal, on 20 October 2008 the Civil Court of Appeal quashed the judgment and remitted the case for a fresh examination on the merits. The decision also stated that the Ministry of Finance should have been involved in the proceedings since the applicant's claims could have implications for the State budget.

19. On 4 August 2009 the Kentron and Nork-Marash District Court of Yerevan delivered its judgment by which it rejected the applicant's claims. The court stated, in particular, that there should be a causal link between the damage allegedly suffered and the fault of the person who allegedly caused the damage, and that the claimant bore the burden of proof in this regard.

20. The applicant lodged an appeal, arguing that the court had applied the provisions of law concerning compensation for damages but that she had withdrawn her claim for damages and had merely demanded the return of her property unlawfully kept by the Agency. She further argued that she had not been charged with any offence in the course of the criminal proceedings; the fact that she had paid the amount in question was confirmed by the payment slip, and moreover the Agency had never denied being in possession of her property.

21. On 4 May 2010 the Civil Court of Appeal rejected the applicant's appeal. The relevant part of the judgment read as follows:

> “Article 1099 § 4 provides that monetary assets and other property given in fulfilment of non-existent obligations are not subject to return as unjust enrichment if the acquirer proves that the person demanding return of the property had knowledge of the absence of an obligation ...
>
> As a result of the examination of the materials of the civil case it has been revealed that the claimant returned the amount in question on the basis of [the Agency’s] demand which was not based either on the law or ... on a contract. In particular, from the legal point of view the respondent [Agency’s] demand for the return of AMD 75,820,000 had no legal basis and the failure to respect it could not of itself bring about ... negative consequences for the claimant.
>
> ... [the applicant] had no financial obligation towards [the Agency]. The fact that [the applicant] was aware of having no obligations towards the respondent [Agency] is also supported by the fact that, apart from [the agreement of 7 September 2004], the parties have not concluded any other ... agreements or an agreement to return a sum of money or another agreement in relation to it.
>
> In view of the foregoing, it can be concluded that paragraph 4 of Article 1099 of the Civil Code is fully applicable in the present ... civil case.
>
> As regards [the applicant’s] argument that [the Agency] had informed her that the General Prosecutor’s Office was investigating matters relating to the ... agreement concluded with her, as a result of which she had been confused and therefore had returned the amount to [the Agency]; the Court of Appeal notes in this respect that this argument may serve as an independent legal basis to dispute [the Agency’s] actions in judicial proceedings ...”

22. The applicant lodged an appeal on points of law. She argued that in the course of the proceedings it had not been substantiated that, when making the payment, she had been aware of the fact that she did not have any obligations towards the Agency, since she had been informed to the contrary, namely that she had been overpaid and that she could be held criminally liable if she did not return the money.

23. On 21 July 2010 the Court of Cassation declared the 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)

24. 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 Civil Code (in force from 1 January 1999)

25. According to Article 132 § 1, monetary assets are objects of the civil law.

26. According to Article 274, the owner has the right to demand the return of his property from the unlawful possession of another person.

27. According to Article 1092, a person who has acquired possession of the property (acquirer) of another person (victim) without any legal or contractual basis has an obligation to return the unlawfully acquired property (unjust enrichment) with the exception of the cases stated in Article 1099 of the Code.

28. According to Article 1099 § 4, monetary assets and other property given in fulfilment of non-existent obligations are not subject to return as unjust enrichment if the acquirer proves that the person demanding return of the property had knowledge of the absence of an obligation or had provided the property for charitable purposes.

C. Government Decree no. 950 of 5 October 2001 Approving the Procedure for the Taking of Plots of Land and Real Estate Situated within the Alienation Zones of Yerevan, their Compensation, Elaboration of Price Offers and their Implementation (ՀՀ կառավարության 2001 թ. հոկտեմբերի 5-ի թիվ 950 որոշումը Երևան քաղաքի օտարման գոտիներում գտնվող հողամասերն ու անհշարժ գույքը վերցնելու, փոխհատուցելու, գնայնի առաջարկը ձևավորելու և իրացնելու կարգը հաստատելու մասին)

29. Paragraph 4 provides that the Yerevan Construction and Investment Project Implementation Agency is responsible for taking the plots of land and real estate, for drawing up price offers to proprietors, and for the supervision and implementation of payment of compensation for expropriation of property.

D. Government Decree no. 1151-N of 1 August 2002 Concerning the Implementation of Construction Projects within the Administrative Boundaries of the Kentron District of Yerevan (ՀՀ կառավարության 2002 թ. օգոստոսի 1-ի թիվ 1151-Ն որոշում Երևանի Կենտրոն թաղային համայնքի վարչական սահմանում կառուցապատման ծրագրերի իրականացման միջոցառումների մասին)

30. For the purpose of implementation of construction projects in Yerevan, the Government decided to designate real estate (plots of land,

buildings and constructions) situated within the administrative boundaries of the Kentron District of Yerevan as expropriation zones, to be taken for the needs of the State, with a total area of 345,000 square metres.

THE LAW

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

31. The applicant complained under Article 1 of Protocol No. 1 to the Convention that she had been unlawfully deprived of her monetary assets in the amount of AMD 75,820,000.

32. 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

33. The Government argued that the applicant should have initiated criminal proceedings against the Agency for fraud. As she had been represented by counsel throughout the proceedings, she should have been aware of that remedy. The applicant did therefore not exhaust the effective domestic remedies, and her application should be declared inadmissible under Article 35 § 1 of the Convention.

34. The applicant claimed that recourse to criminal proceedings would not have been effective, as legal entities could not be held liable for criminal offences, but only physical persons could be perpetrators of crime. It had been the Agency which had contributed to an illegal act when withholding her assets in their bank account, not the Agency official who had received it and transferred it to the Agency’s bank account. Even if the applicant had made a police complaint, it would not unequivocally have entailed the institution of a criminal case, as it was at the prosecutor’s discretion whether or not to institute criminal proceedings.

35. The Court notes that, before lodging her application with the Court, the applicant brought civil proceedings before the domestic courts which ended with a final decision on 21 July 2010. These civil proceedings should be considered an “effective remedy” for the purposes of Article 35 § 1 of the Convention since, on 16 July 2008, the Civil Court of Yerevan granted the applicant’s claims in part (see paragraph 17 above). While the outcome

of the case was not favourable for the applicant, this does not render her recourse to civil proceedings obviously lacking prospects of success. The fact that there might have been other remedies to challenge the Agency's refusal to return the amount at stake to the applicant does not mean that the applicant failed to exhaust domestic remedies (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 74, 25 March 2014). The Government's preliminary objection must therefore be rejected.

36. The Court therefore notes that the application 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 applicant

37. The applicant argued that Article 1099 § 4 of the Civil Code could not serve as a legal basis for the interference as the applicant had not been aware of the absence of any obligation to return the monetary assets when making the payment. The Government had failed to prove the existence of such awareness. It would have been reasonable for the applicant to have believed that she was obliged to return a part of the assets to the State as she had been told that failure to do so would lead to criminal proceedings against her. Once the criminal proceedings against the Agency officials were over, it had become clear to the applicant that she had paid back the money without any legal basis. As Article 1099 § 4 of the Civil Code was not applicable to the applicant's case, the refusal to return her assets was not lawful.

38. Moreover, the applicant noted that the Government had failed to show any public interest in respect of the decision to refuse to return her monetary assets to her. The interference had also been disproportionate.

(b) The Government

39. The Government argued that the applicant had returned the monetary assets of her own free will, and not by virtue of any legal act or provision. The District Court had found that the applicant had failed to prove any fault on the part of the Agency in causing her damage; nor had any fault on her own part when she returned the assets to the Agency been substantiated. According to Article 1099 § 4 of the Civil Code, monetary assets and other property given in fulfilment of non-existent obligations were not subject to return as unjust enrichment, if the acquirer proved that the person demanding return of the property had knowledge of the absence of an

obligation. The applicant did not deny the absence of any kind of obligation to return the amount at issue, but claimed that the return of the assets had taken place only because she was confused at the time. The refusal to return her assets had thus been carried out in compliance with the civil law legislation.

40. The Government pointed out that the applicant had never raised any public-interest issue in the instant case, and therefore this issue had not been subject to consideration by the domestic courts. As to the proportionality, the actions taken by the domestic courts had been proportionate to those taken by the applicant. She had not been deprived of the opportunity to submit her claim to adversarial proceedings.

2. The Court's assessment

41. The Court reiterates that the essential object of Article 1 of Protocol No. 1 is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her possessions. However, by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention". The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, those positive obligations may require the State to take measures necessary to protect the right of property (see *Broniowski v. Poland* [GC], no. 31443/96, § 143, ECHR 2004-V, and *Antonyan v. Armenia*, no. 3946/05, § 49, 2 October 2012).

42. The Court notes that monetary assets are 'possessions' within the meaning of Article 1 of Protocol No. 1. Moreover, monetary assets are also recognised as objects of civil law in the domestic legal system (see paragraph 25 above). Therefore, there is no issue as to the applicability of this Article to the present application.

43. The Court notes that it has not been disputed by the parties that the applicant paid AMD 75,820,000 (approximately EUR 133,958) to the Agency. This payment was definitive in the sense that, as a result, the applicant lost her ownership of this amount of money. There was thus a deprivation of the applicant's property as far as the amount in question was concerned. The main question that arises in the present case is thus whether the Agency was entitled to keep the applicant's monetary assets for whatever reason they were found to be in its possession.

44. The Court reiterates that, to be compatible with Article 1 of Protocol No. 1, deprivation of property 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"

45. 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 (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). However, the existence of a legal basis is not in itself sufficient to satisfy the principle of lawfulness, which also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application. That principle also requires the Court to verify whether the way in which the domestic law is interpreted and applied by the domestic courts produces consequences that are consistent with the principles of the Convention (see, for example, *Apostolidi and Others v. Turkey*, no. 45628/99, § 70, 27 March 2007).

46. In the present case, the Government relied on Article 1099 § 4 of the Civil Code as the legal basis for not returning the applicant's property, as the applicant had allegedly paid the amount knowing that she was not obliged to do so, either by law or on the basis of a contract.

47. The Court accepts that Article 1099 § 4 of the Civil Code provides a sound legal basis for the interference in question, provided that the prerequisites stipulated in that provision are fulfilled. For the Court this provision is also sufficiently accessible, precise and foreseeable in its application. This seems also to have been accepted by the applicant, who only argued that Article 1099 § 4 of the Civil Code did not apply to her case, as the prerequisites had not been fulfilled, namely that she had not been aware of the absence of any obligation to return the monetary assets when making the payment. Leaving aside the issues relating to the application of domestic law and the assessment of evidence, which are the tasks of the domestic courts, the Court considers that the provision in question provided a sufficiently clear legal basis for the interference at stake, which thus was "subject to conditions provided for by law".

(b) "In the public interest"

48. 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, the 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, and *Vistiņš and Perepjolkins*, cited above, § 106).

49. The Court notes the Government have not brought up any arguments as to what public interest the non-restitution of the applicant's property served. It appears from the case file that this matter was simply not discussed during the domestic proceedings. As the Court cannot speculate whether or not the interference served a public interest, it cannot but conclude that the domestic courts failed to show that the deprivation of the applicant's property was carried out in the public interest.

50. Accordingly, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

(c) Proportionality of the impugned measure

51. Having regard to the above conclusion, the Court does not consider it necessary to review compliance with the other requirements of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed AMD 104,061,598 in respect of pecuniary damage. The claimed amount was composed of the following elements: AMD 75,820,000 for the amount paid to the Agency; AMD 16,607,187 for the deduction of 10% of the income tax from the overall compensation amount against the expropriated property; and AMD 7,578,000 for the deduction of 10% of the income tax from the amount of USD 394,479.9 rather than from the USD 214,479.9. Moreover, she claimed EUR 5,000 in respect of non-pecuniary damage.

54. The Government considered that the claim for AMD 75,820,000 had no basis since there had been no violation of the applicant's rights. The

amounts of AMD 16,607,187 and AMD 7,578,000 related to expropriation proceedings which were not the subject of the present application, and the claim in that respect should therefore be rejected. Concerning the non-pecuniary damage, the Government found the amount claimed excessive and considered that it should be reduced.

55. Given the nature of the violation found, the Court finds that the applicant undoubtedly suffered some pecuniary and non-pecuniary damage. In the particular circumstances of the present case, the Court awards the applicant EUR 133,958 in respect of pecuniary damage and EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant also claimed AMD 4,056,411 for the costs and expenses incurred before the domestic courts and AMD 600,000 for those incurred before the Court.

57. The Government considered that the amount claimed for costs and expenses before the domestic courts should be rejected as there had been no violation. They considered the amount claimed for the Court proceedings excessive.

58. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 3,000 under both heads.

C. Default interest

59. 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 application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*

   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 133,958 (one hundred thirty-three thousand nine hundred fifty-eight euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Aleš Pejchal
Deputy Registrar	President