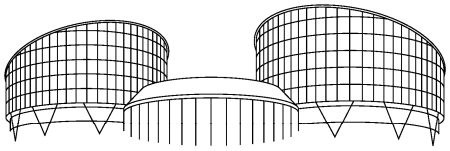

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GHUKASYAN AND OTHERS v. ARMENIA

(Application no. 32986/10)

JUDGMENT

STRASBOURG

29 March 2022

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

In the case of Ghukasyan and Others v. Armenia,

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

Iulia Antoanella Motoc, *President,*
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 32986/10) 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") on 9 June 2010 by three Armenian nationals and one legal entity established in Armenia ("the applicants"), who were represented by Mr H. Alumyan and Mr T. Hayrapetyan, lawyers practising in Yerevan;

the decision to give notice of the complaints concerning the expropriation of the applicants' property under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 8 March 2022,

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

SUBJECT-MATTER OF THE CASE

1. The case concerns the expropriation of the applicants' property in the centre of Yerevan and the ensuing proceedings. The applicants raise complaints under Article 6 of the Convention and Article 1 of Protocol No. 1.

2. The applicants' details and the description of their expropriated property are indicated in the appended table.

3. By Government Decree no. 108□N dated 25 January 2007 the applicants' property was included in an expropriation zone. The acquirer of their property was "AFMH", a private company ("the Company").

4. The expropriation procedure gave rise to three sets of judicial proceedings concluded by the judgments of the Kentron and Nork-Marash District Court of Yerevan ("the District Court") dated 19 June 2008, 17 July and 15 September 2009, all of which were upheld upon appeal.

5. During the proceedings concerning the expropriation of the fourth applicant's property, there was a dispute whether the compensation should include the market value of the building as consisting of two floors measuring 125,22 sq.m. each. Eventually, the District Court sought an expert evaluation of the market value of the fourth applicant's registered

property. The ensuing expert report indicated that the building consisted of two floors each measuring 125.22 sq.m. and estimated its market value of the total surface of 250.44 sq.m. at AMD 398,314,000. The expert stated that the second floor was not an unlawful construction considering that the unauthorised constructions, including the attic and the basement, were marked in the ownership certificate with a special stamp whereas the second floor was not.

6. By its judgment of 17 July 2009 the District Court granted the Company's claim, which had been filed against the first applicant, then director of the fourth applicant, ordering the expropriation of the first applicant's property for the payment of AMD 207,282,900 in compensation. The District Court relied on the valuation report produced by the Company and refused to accept that of the court-appointed expert stating that the latter had failed to determine the market value of the registered part of the property. It was subsequently clarified by the same court's decision of 26 August 2010, upheld upon appeal, that the operative part of the judgment of 17 July 2009 should be understood as concerning the fourth applicant.

7. The first applicant complained under Article 6 and Article 1 of Protocol No. 1 that the final judgment of 19 June 2008 had not been enforced.

8. The first and second applicants complained under Article 1 of Protocol No. 1 that the expropriation of their joint property had been unlawful and without compensation.

9. The third and fourth applicants complained under Article 6 that they were not involved in the proceedings concerning the expropriation of the fourth applicant's property.

10. The fourth applicant complained under Article 1 of Protocol No. 1 that it was deprived of its property (a two-storey building) without any judicial process filed against it, and that no compensation was provided for the second floor of the building.

THE COURT'S ASSESSMENT

I. *LOCUS STANDI*

11. The first and second applicants died in 2021 and 2012 respectively.

A. As regards the complaints raised by the second applicant

12. After the second applicant's death the first applicant, her son, had expressed his wish to pursue the proceedings on her behalf. The Government argued that the first applicant had failed to substantiate his standing to pursue the second applicant's application.

13. The first applicant did not provide any document, such as a succession certificate, to confirm acceptance of the second applicant's succession or any statement confirming that he had accepted the succession of his deceased mother (contrast *Romankevič v. Lithuania*, no. 25747/07, § 15, 2 December 2014), or any other document or detailed information which could be of relevance in his particular case (contrast *Andreyeva v. Russia* (dec.), no. 76737/01, 16 October 2003).

14. The Court therefore does not accept that the first applicant had standing to pursue the proceedings on behalf of the second applicant (see *Piloyan v. Armenia* [CTE], no. 112/11, 19 November 2020). Therefore, no question arises whether the first applicant's wife, who has expressed her wish to pursue the application on behalf of the first applicant (see paragraph 16 below), could have standing to pursue the proceedings also in so far as the second applicant's complaints are concerned.

15. Accordingly, the part of the application relating to the complaints lodged by the second applicant should be struck out pursuant to Article 37 § 1 (c) of the Convention.

B. As regards the complaints raised by the first applicant

16. After the first applicant's death, his wife, Ms Lilya Gevorgyan, requested to pursue the proceedings on his behalf. She submitted a certificate attested by a notary on accepting the first applicant's inheritance. The Government objected to Ms Gevorgyan's standing to pursue the first applicant's complaints. Having regard to its case-law (see *Andreyeva* and *Piloyan*, both cited above), the Court considers that the provided document is sufficient to prove the legal standing of Ms Gevorgyan. The Government's objection is therefore dismissed.

17. Accordingly, the Court accepts that Ms Gevorgyan has standing to pursue the application on behalf of the first applicant in so far as the latter's own complaints are concerned (see paragraph 14 above). For convenience, the Court will continue to refer to Mr Ghukasyan as the first applicant.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

18. The Court notes that the fourth applicant's complaint (see paragraph 10 above) is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

19. It is not in dispute between the parties that there has been a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1.

20. 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 *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 94, 25 October 2012).

21. In order for an interference to be lawful, it must be accompanied by sufficient procedural guarantees against arbitrariness including an opportunity to effectively challenge the measure in question (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 134, ECHR 2005-XII (extracts); *Vistiņš and Perepjolkins*, cited above, § 97; and *Project-Trade d.o.o. v. Croatia*, no. 1920/14, § 82, 19 November 2020).

22. The Company lodged its claim seeking the expropriation of the fourth applicant's property against the first applicant (the fourth applicant's majority shareholder and director) personally, that is not against the fourth applicant, represented by the first applicant in his capacity as the latter's director. In its turn, the District Court did not involve the fourth applicant, a distinct legal entity which had sole ownership of the property in question, as a proper respondent in the proceedings although it eventually ordered the expropriation of its property. The fact that the District Court subsequently issued a clarification stating that the judgment of 17 July 2009 concerned the fourth applicant and its property (see paragraph 6 above) by no means compensated the major procedural handicap caused to the fourth applicant all the more so considering that it was not involved in the proceedings concerning the clarification of that judgment either.

23. The Court therefore concludes that the deprivation of the fourth applicant's possessions was not accompanied by sufficient procedural guarantees against arbitrariness and was thus not lawful within the meaning of Article 1 of Protocol No. 1. This conclusion makes it unnecessary for the Court to ascertain whether the other requirements of that provision have been complied with (see *Minasyan and Semerjyan v. Armenia*, no. 27651/05, § 76, 23 June 2009).

24. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the fourth applicant.

III. OTHER COMPLAINT

25. Relying on Article 6 of the Convention, the fourth applicant complained that it was not involved in the proceedings concluded by the judgment of 17 July 2009. Having regard to its earlier findings (see paragraph 23 above), the Court finds that it is not necessary to give a separate ruling on this complaint (see *Hakobyan and Amirkhanyan v. Armenia*, no. 14156/07, § 56, 17 October 2019).

IV. REMAINING COMPLAINTS

26. The first and third applicants raised several complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 (see paragraphs 7, 8 and 9 above). The Court has examined that part of the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The fourth applicant claimed EUR 2,430,350 in respect of pecuniary damage, including AMD 677,350,000 for the second floor, the attic and the basement of the expropriated building and its underlying plot of land and EUR 943,140 for loss of rental income. It also claimed EUR 6,000 in respect of non-pecuniary damage.

28. The Government contested the claims in respect of pecuniary damage and considered that the claim in respect of non-pecuniary damage was excessive.

29. The Court found a violation of Article 1 of Protocol No. 1 on account of the breach of the State's procedural obligations under that Article (see paragraphs 23 and 24 above). While the fourth applicant's property was indeed expropriated, the Court cannot speculate as to what the eventual outcome might have been if the fourth applicant had been able to effectively participate in the relevant proceedings and submit its arguments, including with regard to the basis for the calculation of the compensation (see, *mutatis mutandis*, *Capital Bank AD*, § 144, and *Project-Trade d.o.o.*, § 110, both cited above). As for the claim concerning lost income, it is of a speculative nature (see *Vardanyan v. Armenia* (just satisfaction), 8001/07, § 37, 25 July 2019, and compare *Hakobyan and Amirkhanyan*, cited above, §§ 58 and 67). In these circumstances, the Court rejects the claims in respect of pecuniary damage. On the other hand, it awards the fourth applicant EUR 3,000 in respect of non-pecuniary damage.

30. The applicants jointly claimed EUR 60,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. In support of their claims they submitted an agreement whereby they were liable to pay their representatives 5% of the amount awarded to them by the Court in the event of a judgment in their favour, and in any event no less than EUR 10,000 and no more than EUR 60,000.

31. The Government considered that the claims in respect of legal costs were excessive.

32. The Court has previously recognised the validity of contingency fee agreements (see, for example, *Asatryan v. Armenia*, no. 3571/09, §§ 78-79, 27 April 2017, and *Safaryan v. Armenia*, no. 576/06, §§ 62-63, 21 January 2016). It sees no reason to depart from that approach in the present case. On the other hand, regard being had to the documents in its possession and the fact that a violation was found only in respect of the fourth applicant (see paragraph 24 above), the Court considers it reasonable to award the fourth applicant the sum of EUR 2,000 for the proceedings before the Court, plus any tax that may be chargeable.

33. The Court further 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. *Decides* to strike the application in its part relating to the complaints lodged by the second applicant out of its list of cases in accordance with the Article 37 § 1 (c) of the Convention;

2. *Holds* that Ms L. Gevorgyan has standing to pursue the application in the first applicant's stead;

3. *Declares* the complaints concerning the expropriation of the fourth applicant's property admissible and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the fourth applicant;

5. *Holds* that there is no need to examine the fourth applicant's complaint under Article 6 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the fourth 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, 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;

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

Done in English, and notified in writing on 29 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Iulia Antoanella Motoc President

APPENDIX

No.	Applicant Year of birth / Date of registration / Place of residence / Registered address	Details of the applicants and their expropriated property
1.	Hovhannes GHUKASYAN ("the first applicant") 1957, Yerevan	The first applicant owned a house measuring 147.03 sq. m. located at 4 Abovyan Street. He also owned, jointly with the second applicant, a house having 54 sq. m of living space and a 34.6 sq. m. terrace situated on a plot of land measuring 281 sq. m., at 24 Arami Street.
2.	Zvart MRYAN ("the second applicant") 1935, Yerevan	The second applicant was the first and third applicants' mother. She had joint ownership with the first applicant to the property situated at 24 Arami Street (see above).
3.	Lusik MRYAN ("the third applicant") 1951,Yerevan	The third applicant, the first applicant's sister and the second applicant's daughter, owned 1.5% of the fourth applicant's shares.
4.	OLIMP PRODUCERS' COOPERATIVE ("the fourth applicant") 1995, Yerevan	In 1995 the first, second and third applicants established the fourth applicant which acquired from the State a building located at 4 Abovyan Street. Prior to the expropriation of the building, it was used by the fourth applicant for business purposes. The first applicant owned 95.875 % of the fourth applicant's shares and the second and third applicants owned respectively 2.625% and 1.5% of its shares.