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

# FOURTH SECTION

# DECISION

Application no. 60524/12
TSITSERNAK-8 LTD
against Armenia

The European Court of Human Rights (Fourth Section), sitting on 14 December 2021 as a Committee composed of:

Jolien Schukking, *President,*
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to the above application lodged on 17 September 2012,

Having regard to the decision to give notice to the Armenian Government ("the Government") of the application,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, 'Tsitsernak-8' Ltd ("the applicant company"), is a limited liability company registered in Armenia and engaged in the restaurant business in Yerevan. It is represented before the Court by Mr K. Mezhlumyan, a lawyer practising in Yerevan.

2. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

### A. Background to the dispute

3. On 13 March 1997 the Government adopted a decree, allowing the transfer of ownership of a State-owned café located in a park to the applicant company under a privatisation scheme. Subsequently, a privatisation agreement was concluded between the Government and the

applicant company on 12 August 1997. The applicant company's title to the café and its adjacent buildings with a total surface area of 1581.3 sq. m. was registered at the State Real Estate Registry.

4. By a decision of the Mayor of Yerevan ("the Mayor") of 4 October 2000, the land beneath and surrounding the café, with a total area of 6,646 sq. m., was leased to the applicant company for a period of fifty years.

5. On 15 July 2004 the Government adopted Decree no. 1043-N, whereby the Mayor was to provide a plot of land to "Karen Demirchyan Sports and Concerts Centre" ("the Centre"), a State non-profit organisation located in the same park as the applicant's company's café. The relevant parts of the decree read as follows:

> "3. [The Centre] would exercise on behalf of the State the rights of the lessor pursuant to the lease agreements in respect of the parks and gardens which are State-owned and have been transferred to other persons with the right of use and are located in the plot of land necessary for the preservation and maintenance of [the Centre]..."

6. On 25 August 2005 the Government adopted Decree no. 1321-N ("the Decree") allowing the sale of the property of the Centre to BAMO Ltd, a private company, which was to set up "Karen Demirchyan Sports and Concerts Complex" ("the Complex") commercial company and make certain investments with the aim of rebuilding and modernising the Centre. The Decree stated, *inter alia*, that the buyer had the right to lease the plot of land measuring 19.54 ha that was occupied by the Centre for a period of fifty years, and also had a pre-emptive right of purchase. The plot of land to be transferred to the newly-established company in accordance with the Decree included the land leased to the applicant company.

7. On 2 November 2005, with reference to the Decree, the Mayor decided to lease the plot of land measuring 19.54 ha to the Complex for a period of fifty years with the pre-emptive right of purchase. The decision further stated the following:

> "To confer [on the Complex] the right to the early rescission of sublease contracts concluded between the economic entities operating on the plot of land [leased to it] and [allow the Complex] to conclude new lease agreements with those [economic entities] under the same conditions included in the sublease contracts concluded with them previously".

## B. Court proceedings instituted by the applicant company

### *1. The first round of the proceedings*

8. According to the applicant, on 12 December 2006 it lodged a claim with the Kentron and Nork-Marash District Court of Yerevan ("the District Court") against the Government, the Mayor and the Complex as a third party, seeking the annulment of the Decree (see paragraph 6 above) and the Mayor's decision of 2 November 2005 (see paragraph 7 above) in so far as these acts concerned the land measuring 6,646 sq. m. that had been leased to

it. It argued that the Decree had been adopted in breach of the requirements of Article 62 § 2 of the Land Code (see paragraph 36 below). The applicant company also sought the recognition of its pre-emptive right to acquire the land in question pursuant to Article 48 § 3 of the Land Code (see paragraph 35 below). According to the Government, the applicant company lodged its claim with the District Court on 12 July 2007.

9. By decision of 7 September 2007 the District Court transferred the applicant company's case to the Commercial Court.

10. On 1 January 2008 the Commercial Court ceased to exist and the applicant company's case was transferred to the Administrative Court.

11. On 23 September 2008 the Administrative Court, sitting in a single-judge formation, rejected the applicant company's claim.

12. The applicant company lodged an appeal on points of law, arguing, *inter alia*, that its claim disputing normative legal acts should have been examined by a five-judge panel, as required by Article 137 of the Code of Administrative Procedure (see paragraph 39 below).

13. By a decision of 13 March 2009 the Court of Cassation quashed the judgment of 23 September 2008 and submitted the case to the Administrative Court for a fresh examination.

*2. The second round of the proceedings*

14. On 9 April 2009 a five-judge panel of the Administrative Court examined the applicant company's case. It decided to sever the applicant company's claim as regards the Mayor's decision of 2 November 2005. Furthermore, upon the applicant company's application, it suspended its examination until the determination of the claim disputing the Decree. The outcome of the proceedings concerning the examination of the separated claim is not known.

15. By a decision of 30 April 2010 the Administrative Court rejected the applicant company's claim against the Decree as unsubstantiated.

16. The applicant company lodged an appeal on points of law complaining, *inter alia*, that it had not been notified of the hearings before the Administrative Court.

17. On 4 March 2011 the Court of Cassation quashed the decision of 30 April 2010 on the grounds that the applicant company had not been duly notified of the proceedings before the Administrative Court and submitted the case to the same court for a fresh examination.

*3. The third round of the proceedings*

18. On 13 April 2011 the Administrative Court decided to examine the applicant company's claim by written procedure and informed the applicant of that decision.

19. On 8 June and 3 August 2011 the applicant company submitted a written request to the Administrative Court asking it to hold an oral hearing. It claimed that the examination of its claim without holding a hearing would violate its right to a public hearing.

20. The applicant company's request was rejected. The applicant company's representative was notified that the pronouncement of the court's decision was to take place on 13 September 2011 at 5.50 p.m.

21. According to the applicant company, on 13 September 2011 its representative appeared in the indicated hearing room in the Administrative Court earlier than the scheduled time. However, no judge appeared and the decision was not pronounced.

22. According to the Government, the decision of 13 September 2011 was pronounced publicly on the scheduled date. In support of their submission, the Government submitted to the Court the copy of the record of the public pronouncement of the impugned decision.

23. By decision of 13 September 2011, the applicant company's claim was rejected in full. The Administrative Court found, in particular, that the Government had acted in accordance with Article 75 § 1 of the Land Code (see paragraph 37 below) when transferring its land to a State non-profit organisation with a right of lease. As regards the applicant company's assertions that it had a pre-emptive right to acquire the plot of land in question pursuant to Article 48 § 3 of the Land Code, it held that the said provision was not applicable since the lease agreement between the applicant company and the Mayor had not been rescinded and the applicant company had in fact a registered right of lease in respect of the plot of land in question. Neither was Article 62 § 2 of the Land Code applicable, given that no alienation of the plot of land leased to the applicant company had ever taken place.

24. On 27 September 2011 the applicant company's representative applied to the Administrative Court, stating that he had appeared in court on the scheduled date but no hearing had been held and the decision had not been pronounced. He asked to be informed of the status of the applicant company's claim and to be provided with the audio recording of the hearing. In reply, it was submitted that the decision of 13 September 2011 had been pronounced on the same date at 5.50 p.m. However, due to technical problems with the computer the record of the pronouncement of the decision had been made in paper form. It was further noted that the text of the impugned decision had been published on the public online database of judicial acts (Datalex).

25. The applicant company lodged an appeal against the decision of 13 September 2011 and requested that the case be examined in a public hearing.

26. By decision of 25 January 2012 the Administrative Court of Appeal refused to hold a public hearing stating, in particular, that it did not consider

it necessary to apply the exception under Article 138 of the Administrative Procedure Code (see paragraph 40 below) to conduct oral proceedings, since the applicant company's case was not high profile and holding oral proceedings would not contribute to the speedy examination of the circumstances of its case.

27. On 26 January 2012 the Administrative Court of Appeal rejected the applicant company's appeal and fully upheld the decision of 13 September 2011 (see paragraph 23 above).

28. The applicant company lodged an appeal on points of law.

29. On 21 March 2012 the Court of Cassation declared the applicant company's appeal on points of law inadmissible due to lack of merit.

### C. Developments after the introduction of the application

30. On 25 July 2013 the Complex lodged a claim with the District Court against the applicant company, seeking to oblige it to sign a sub-lease agreement in respect of the plot of land measuring 6,646 sq. m. which had been leased to it by the Mayor's decision of 4 October 2000.

31. By the District Court's judgment of 23 September 2014 the Complex was declared bankrupt and subject to liquidation.

32. By a judgment of 10 March 2017 the District Court rejected the claim lodged by the Complex against the applicant company, with reference to the judgment of 23 September 2014, finding that, after being declared bankrupt, the Complex did not have the right to conclude a sub-lease agreement with the applicant company. It appears that no appeal was lodged and the judgment became final.

33. In the meantime, on 26 August 2015 the applicant company submitted an application to the Mayor's Office with a request to conclude a new lease agreement in respect of the same plot of land.

34. On 11 April 2016 the Mayor took a decision whereby he offered a new lease agreement to the applicant company with an updated duration and rental fee. The applicant company received that offer on 16 May 2016 and did not respond to it.

## RELEVANT LEGAL FRAMEWORK

### A. The land code

35. Article 48 § 3 provides that the lessee of a State-owned plot of land has a pre-emptive right to acquire it if the lease agreement is being renewed on previous or new terms or in the case of alienation of the given plot of land.

36. Article 62 §§ 2 and 3 provide that State-owned plots of land in respect of which natural and legal persons have a right of use (until the

expiry of its time-limit) cannot be alienated to another person if the agreement has not been terminated in the prescribed manner. Ownership of a plot of land may be transferred to the owner (owners) of buildings and constructions located on that land.

37. According to Article 75 § 1 land owned by the State may, without a competition, be transferred for gratuitous (indefinite) use to State or community institutions and organisations, charitable, non-governmental organisations and foundations and in cases prescribed by a law or other normative legal acts.

### B. The Code of Administrative Procedure (as in force at the material time)

38. According to Article 135, the Administrative Court has jurisdiction over disputes concerning the compliance of Government decisions with normative acts having higher legal force (except the Constitution).

39. According to Article 137, the cases over the disputes envisaged by Article 135 are to be examined by a five-judge panel of the Administrative Court (collegial formation).

40. According to Article 138, the Administrative Court carries out written proceedings in cases envisaged by Article 135 with the exception of those cases where, in the court's view, the given case has become high profile or where oral examination will contribute to the prompt discovery of the circumstances of the case.

### C. Decision of the Constitutional Court of 11 April 2012 on the conformity of Article 138 of the Code of Administrative Procedure with the Constitution, adopted on the basis of an application lodged by Shavarsh Mkrtchyan and others (ՀՀ սահմանադրական դատարանի 2012թ. ապրիլի 11-ի որոշումը քաղաքացի Շավարշ Մկրտչյանի և այլոց դիմումի հիման վրա՝ ՀՀ վարչական դատավարության օրենսգրքի 138-րդ հոդվածի՝ ՀՀ սահմանադրությանը համապատասխանության հարցը որոշելու վերաբերյալ)

41. The Constitutional Court found Article 138 of the Code of Administrative Procedure to be *per se* compatible with the Constitution pointing out, however, the existence of a legal vacuum in the administrative procedure as regards the absence of a clear procedure for conducting written proceedings. The Constitutional Court stated that in circumstances where no precise rules of written proceedings were envisaged by the legislation, absolute discretion was left to the court in deciding the ways in which the parties could exercise their procedural rights. Also, the Constitutional Court

referred to the need to implement the necessary legislative changes to ensure the protection of parties' procedural rights, particularly as regards the procedure and time□limits for the submission of documents, additional evidence and the duties of the court in relation to the organisation of correspondence between the parties on the one hand and between the court and the parties on the other hand.

# COMPLAINTS

42. The applicant company complained under Article 6 § 1 of the Convention about the lack of a public hearing before the Administrative Court and the Administrative Court of Appeal. It further complained under the same provision that the decision of the Administrative Court dated 13 September 2011 was not pronounced publicly and that the proceedings were unreasonably lengthy.

43. Lastly, the applicant company complained that the lease to the Complex of the plot of land beneath and surrounding its café was in breach of the requirements of Article 1 of Protocol No. 1 to the Convention.

# THE LAW

## A. Complaints under Article 6 § 1 of the Convention

44. The applicant company raised a number of complaints under Article 6 § 1 of the Convention which, so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time ... by [a] ... tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

### *1. As regards the complaint about the lack of a public hearing*

45. The Government argued that the refusal by the Administrative Court to hold an oral hearing in the applicant company's case could not be considered to have constituted a refusal to hold a public hearing. The written proceedings conducted in the present case were public and therefore in full compliance with the requirements of Article 6 § 1 of the Convention.

46. The Government submitted that the administrative courts were not required to hold a hearing under the law (see paragraph 40 above) since proceedings concerning compliance of Government decrees with normative acts of a higher legal force were to be carried out by written procedure with the exception of those cases where the given case had become high profile

or where oral examination would contribute to the prompt discovery of the circumstances of the case. In the present case, however, no such circumstances existed.

47. Lastly, the Government argued that an oral hearing was not required in the applicant company's case since there were no issues of credibility or contested facts which necessitated a hearing. It was therefore legitimate for the domestic courts to have regard to the demands of efficiency and economy. The applicant company had contested the compliance of the Government decree with normative acts of a higher legal force, an issue, of strictly legal character which would not have been resolved in a more appropriate manner had an oral hearing been held.

48. The applicant company reiterated its complaints (see paragraph 42 above).

49. The Court reiterates that, in proceedings before a court of first and only instance, the right to a "public hearing" entails an entitlement to an "oral hearing" under Article 6 § 1 unless there are exceptional circumstances that justify dispensing with such a hearing (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 188, 6 November 2018). The Court has accepted exceptional circumstances existed in cases where the proceedings concerned exclusively legal or highly technical questions (ibid., § 190). There may be proceedings in which an oral hearing may not be required: for example, where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (ibid.).

50. In the present case, the proceedings before the Administrative Court and the Administrative Court of Appeal were conducted by written procedure despite the applicant company's requests to hold a public oral hearing.

51. The Court notes that under domestic law on administrative procedure proceedings concerning disputes over the lawfulness of Government decrees are in principle conducted in writing. In particular, pursuant to Article 138 of the Code of Administrative Procedure, the Administrative Court conducts written proceedings in such cases with the exception of those cases where, in the court's view, the given case has become high profile or where oral examination will contribute to the prompt discovery of the circumstances of the case (see paragraph 40 above). That is, under domestic law holding a public oral hearing in this category of cases is an exception to the general rule of not holding one (compare *Andersson v. Sweden*, no. 17202/04, §§ 32 and 53, 7 December 2010). The Court will therefore proceed to examine whether in the circumstances of the present case, having regard to the nature of the issues before the domestic courts, the refusal to hold an oral hearing was justified.

52. The Court observes that in its request to hold a public oral hearing, the applicant company merely referred to its constitutional right to a public hearing without providing any particular circumstances capable of justifying an oral hearing in its case. In this connection, the Court observes that the relevant facts submitted before the Administrative Court were based on the applicant company's own submissions and remained undisputed throughout the proceedings. The applicant company never raised any factual questions during the proceedings, but confined itself to challenging the legal conclusions drawn from the undisputed facts.

53. The Court further observes that there is nothing in the applicant company's submissions to suggest that the purpose of obtaining an oral hearing was to put forward any further argument or evidence of relevance for the Administrative Court and the Administrative Court of Appeal in terms of the assessment of the legal issues before them. Notably, the applicant company did not request that any witnesses be heard, nor that any other oral evidence be put forward. In these circumstances, it appears that an oral hearing would not have provided any new information of relevance to the determination of the case, nor would it have contributed to the prompt discovery of the circumstances of the case.

54. In addition, the Court lends credence to the argument put forward by the Government to the effect that the applicant company had contested the compliance of the Government decree with normative acts of a higher legal force, an issue of strictly legal character which would not have been resolved in a more appropriate manner had an oral hearing been held (see paragraph 47 above). In the Court's view, the applicant company's requests for an oral hearing did not include any issues that could not have been reasonably and fairly decided on the basis of the case file and the parties' written submissions. As the applicant company was represented by counsel throughout the entire proceedings, its interests were properly presented and it had no difficulty in arguing its case in a written procedure.

55. Lastly, the Court notes that by its decision of 11 April 2012 the Constitutional Court found Article 138 of the Code of Administrative Procedure to be *per se* compatible with the Constitution (compare and contrast, *mutatis mutandis*, *Karahanoğlu v. Turkey*, no. 74341/01, §§ 36-39, 3 October 2006) finding, however, that there existed a legal vacuum as regards the absence of a clear procedure for conducting proceedings in writing. In particular, the Constitutional Court stated that in the circumstances where no precise rules governing written proceedings were envisaged under the law, the courts had absolute discretion in deciding the ways in which the parties could exercise their procedural rights (see paragraph 41 above). In the present case, however, the applicant company did not raise the issue that it had in fact suffered any practical disadvantage because of insufficient procedural safeguards.

56. In view of the foregoing and having regard to the demands of efficiency and economy which the national authorities might have taken into account (see *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263), the Court concludes that the Administrative Court and the Administrative Court of Appeal could abstain from holding an oral hearing in the present case. This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

*2. As regards the complaint about the lack of public pronouncement of the Administrative Court's decision of 13 September 2011*

57. The Government argued that the operative part of the decision of the Administrative Court of 13 September 2011 had been pronounced publicly on the scheduled date and that the record of the pronouncement of the decision had been made in paper form (see paragraph 22 above). The applicant company's representative was duly notified that the pronouncement of the court's decision was to take place on 13 September 2011 at 5.50 p.m.

58. The Government submitted that, in any event, the applicant company had been provided with a written copy of the decision and it had been afforded an effective opportunity to challenge it before the Administrative Court of Appeal.

59. The applicant company maintained its complaint. It did not comment on receiving the copy of the paper version of the record of the pronouncement of the impugned decision.

60. The Court reiterates its settled case-law according to which, the requirement for the judgment to be delivered in public has been interpreted with a certain degree of flexibility. Thus, it has held that despite the wording which would seem to suggest that reading out in open court is required, other means of rendering a judgment public may be compatible with Article 6 § 1 of the Convention. As a general rule, the form of publicity to be given to the judgment under domestic law must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1. In making this assessment, account must be taken of the entirety of the proceedings (see *Pretto and Others v. Italy*, judgment of 8 December 1983, Series A no. 71, p. 12, §§ 25□27; *Moser v. Austria,* no. 12643/02, § 101, 21 September 2006; and *Ryakib Biryukov v. Russia*, no. 14810/02, § 32, ECHR 2008).

61. Turning to the present case, the Court notes at the outset that the parties disagreed as to whether the decision of the Administrative Court of 13 September 2011 had been pronounced publicly. The Government argued that the operative part of the impugned decision was pronounced publicly on the scheduled date (see paragraphs 57-58 above), while the applicant company submitted that its representative had appeared in court on the

scheduled date but no judge appeared and the relevant decision had not been pronounced publicly (see paragraphs 21, 42 and 59 above).

62. The Court observes that the applicant company was duly notified about the date and place of the pronouncement of the decision of the Administrative Court of 13 September 2011 while, as noted above, it did not comment on the copy of the paper version of the record of the pronouncement of the Administrative Court's decision of 13 September 2011 provided by the Government (see paragraph 59 above). Hence, there is no reason to doubt the credibility of the document in question. Furthermore, the applicant company failed to substantiate its allegation that its representative had in fact attended the impugned hearing.

63. In addition, the Court notes that in its observations the applicant company did not dispute the fact that the decision at issue had been published in the online database of judicial acts. Neither did it allege that it did not have access to it for some reason (see paragraph 59 above).

64. In view of the above, the Court finds that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

*3. As regards the complaint about the alleged excessive length of the proceedings*

65. The Government submitted that the applicant company had failed to indicate the correct starting date of the proceedings. They stated that the applicant company lodged its claim with the District Court on 12 July 2007 and not on 12 December 2006, as indicated in its application.

66. The applicant company submitted that the proceedings in its case had started on 12 December 2006. In support of this, it provided the Court with the extract from Datalex, which indicated that the applicant company had lodged its claim on 12 December 2006.

67. In their further observations the Government did not agree that the starting date of the proceedings had been 12 December 2006. They pointed out that Datalex had been launched only in 2008, while the applicant company's claim was lodged in 2007. As a result, the data concerning the applicant company's case was entered in Datalex in 2008 and the date of the introduction of its claim with the District Court had been indicated wrongly.

68. The Court does not need to determine the starting date of the proceedings which, as noted above, is contested between the parties, since the applicant company's complaint is in any event inadmissible for the following reasons.

69. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant company and the relevant authorities and what was at stake for the applicant company in the dispute (see *Frydlender v. France*

[GC], no. 30979/96, § 43, ECHR 2000-VII; and *Fil LLC v. Armenia*, no. 18526/13, § 52, 31 January 2019).

70. Having regard to the foregoing criteria, and even assuming that the proceedings started on 12 December 2006, as claimed by the applicant company (see paragraph 66 above), the Court notes that they ended with the decision of the Court of Cassation dated 21 March 2012 (see paragraph 29 above). The proceedings consequently lasted about five years and three months for three levels of jurisdiction, which cannot be considered excessive.

71. Accordingly, the Court finds that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## B. Complaint under Article 1 of Protocol No. 1 to the Convention

72. The applicant company submitted that the Mayor had leased to a third person the plot of land in respect of which it had lease rights. As a result, its pre-emptive right to acquire the impugned plot of land had been breached. It relied on Article 1 of Protocol No. 1 to the Convention, which reads:

> "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."

### *1. The parties' submissions*

73. The Government raised two objections as to the admissibility of this complaint.

Firstly, they submitted that the applicant company had failed to inform the Court that, based on its representative's request of 26 August 2015, the Mayor had taken a decision on 11 April 2016 to offer it a new lease agreement with an updated duration and rental fee in respect of the plot of land in question. However, the applicant company had not replied to that offer (see paragraph 34 above). On that basis, the Government argued that the applicant company had tried to mislead the Court, and that its application was for this reason abusive.

Secondly, the Government submitted that the applicant had failed to exhaust the domestic remedies available to it. In particular, upon the applicant company's request, the examination of the claim challenging the Mayor's decision of 2 November 2005 had been suspended until the

determination of the claim disputing the Decree. The applicant company, however, had failed to display necessary diligence to seek the resumption of the suspended proceedings to challenge the Mayor's decision of 2 November 2005 (see paragraph 14 above).

74. The Government argued that the lease agreement concluded between the applicant company and the Mayor on 4 October 2000 had never been annulled. The applicant company had always retained its registered right of lease over the plot of land in question and continued to occupy it and operate its business. Therefore, under the legislation in force at the relevant time, no alienation of the plot of land had occurred (see paragraph 36 above). As regards the applicant company's pre-emptive right to purchase the plot of land occupied by its business, the Government argued that Article 48 § 3 of the Land Code was not applicable to the case at hand since the lease agreement concluded between the applicant company and the Mayor on 4 October 2000 had never been rescinded (see paragraphs 23 and 35 above). As a consequence, there had been no interference with the applicant company's right to the peaceful enjoyment of its possessions.

75. The applicant company claimed that it had not informed the Court about the Mayor's decision of 11 April 2016 (see paragraph 34 above) because the terms of the proposed agreement had been different from the one concluded on 4 October 2000 (see paragraph 4 above).

76. The applicant company submitted that after the adoption of the decision on 2 November 2005 (see paragraph 7 above), it no longer had registered lease rights over the plot of land in question. In support of this submission the applicant company referred to the fact that on 11 April 2016 the Mayor took a decision, whereby he offered a new lease agreement to it with new terms (see paragraph 34 above).

*2. The Court's assessment*

77. The Court finds that it is not necessary to address the Government's arguments of abuse of the right of petition and non-exhaustion of domestic remedies, as the applicant company's complaint is, in any event, inadmissible for the following reasons.

78. The Court reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. "Possessions" can be "existing possessions" or claims that are sufficiently established as to be regarded as "assets" (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 142-43, 20 March 2018).

79. Having regard to its case-law (see, *mutatis mutandis*, *Trgo v. Croatia*, no. 35298/04, § 46, 11 June 2009), the Court considers that the applicant company's pre-emptive right to acquire the plot of land constituted a "claim" rather than an "existing possession".

80. Where a proprietary interest is in the nature of a claim, it may be regarded as an "asset" only if there is a sufficient basis for that interest in national law – that is to say when the claim is sufficiently established as to be enforceable (see, for example, *Radomilja and Others*, cited above, § 142).

81. In the present case, the applicant company entered into a lease agreement with the Mayor's Office for a period of fifty years (see paragraph 4 above). As correctly pointed out by the Government, the applicant company's lease rights over the plot of land in question remained registered with the State Real Estate Registry (see paragraph 74 above). Contrary to the applicant company's assertions, there is nothing to indicate that its registered lease rights over the plot of land at issue were ever annulled. There is equally nothing to indicate that the applicant company's registered lease rights were at any point challenged before the domestic courts. Furthermore, it appears from the facts and the documents submitted by the parties that the applicant company continued to occupy the plot of land in question and operate its business activity without any impediment.

82. Against this background, the issue to be examined is whether the applicant company's pre-emptive right to acquire the plot of land in question had a sufficient basis in national law to be regarded as an "asset" and therefore a "possession" protected by Article 1 of Protocol No. 1 to the Convention.

83. In this connection, the Court notes that under the relevant provisions of domestic law, the lessee of State-owned plot of land has a pre-emptive right to acquire it if the lease agreement is being renewed on previous or new terms or in the case of alienation of the given plot of land (see paragraph 35 above).

84. In the present case the domestic courts dismissed the applicant company's claim on the grounds that the lease agreement concluded with the Mayor on 4 October 2000 had never been rescinded and the applicant company had always maintained its registered right of lease in respect of the plot of land in question. Furthermore, the domestic courts found that the land in question had not been alienated to a third party (see paragraphs 23 and 27 above).

85. The applicant company disagreed with the domestic courts' findings, arguing that the land leased to it had simultaneously been leased to another commercial entity, the Complex, in breach of its right to the peaceful enjoyment of its possessions guaranteed under Article 1 of Protocol No. 1 to the Convention. It argued that the Decree (see paragraph 6 above) had granted the Complex a pre-emptive right to purchase the land in question, whereas under the law the applicant company should have the pre-emptive right in respect of the land occupied by its business should the State decide to lease it again or alienate it.

86. In so far as the applicant company's arguments concern the interpretation and application of the relevant domestic law provisions by the domestic courts, the Court reiterates that its power of review is limited. This is particularly true when, as in this instance, the case turns upon difficult questions of interpretation of domestic law. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to that of ascertaining whether the effects of that interpretation are compatible with the Convention. It is for that reason that the Court has held that, in principle, it cannot be said that an applicant has a sufficiently established claim amounting to an "asset" for the purposes of Article 1 of Protocol No. 1, where there is a dispute as to the correct interpretation and application of domestic law and where the question of whether or not he or she complied with the statutory requirements is to be determined in judicial proceedings (see, for example, *Radomilja and Others*, cited above, § 149).

87. In the present case, there are no elements that would lead the Court to hold that the way the domestic courts interpreted and applied the relevant provisions of domestic law was arbitrary or manifestly unreasonable.

88. In particular, as stated above, the lease agreement concluded between the applicant company and the Mayor was never annulled (see paragraph 81 above). The domestic courts found that Article 48 § 3 of the Land Code (see paragraph 35 above) was not applicable to the applicant company's case since the lease agreement concluded between the latter and the Mayor on 4 October 2000 had not been rescinded and the applicant company had a registered right of lease in respect of the plot of land in question. Furthermore, no alienation of the plot of land to a third party had ever taken place. Notably, the applicant company did not contest this in its submissions before the Court (see paragraph 76 above).

89. The Court therefore concludes that the applicant company's pre-emptive right to acquire the plot of land in question did not have sufficient basis in national law to qualify as a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

90. It follows that this complaint is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 20 January 2022.

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| Ilse Freiwirth<br>Deputy Registrar | Jolien Schukking<br>President |