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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Date: 29/06/2020

DH-DD(2020)573

Meeting: 1383rd meeting (29 September – 1 October 2020) (DH)

Communication from NGOs: Open Society Foundations-Armenia, Protection of Rights without Borders NGO, Helsinki Citizens Assembly of Vanadzor, Transparency International Anticorruption Center and Law Development and Protection Foundation (17/06/2020) and response from the Armenian authorities (25/06/2020) in the case of Vardanyan and Nanushyan v. Armenia (Application No. 8001/07).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1383e réunion (29 septembre – 1 octobre 2020) (DH)

Communication d'ONG : Open Society Foundations-Armenia, Protection of Rights without Borders NGO, Helsinki Citizens Assembly of Vanadzor, Transparency International Anticorruption Center and Law Development and Protection Foundation (17/06/2020) et réponse des autorités arméniennes (25/06/2020) relative à l'affaire Vardanyan et Nanushyan c. Arménie (requête n° 8001/07) ***[anglais uniquement]***

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI Directorate General of Human Rights and Rule of Law
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17 June 2020

No. 8001/07
Vardanyan and Nanushyan v. Armenia

This message is sent to you in the context of consideration by the Committee of Ministers of the execution by the Republic of Armenia of the Vardanyan and Nanushyan v. Armenia case (no. 8001/07). Please find enclosed a Communication prepared by the below listed organisations pursuant to Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
Should you need any further clarifications, please do not hesitate to contact us (contact person: Arpi Harutyunyan, Open Society Foundations-Armenia, e-mail: arpi@osi.am).

On behalf of Open Society Foundations-Armenia  D.Amiryan

On behalf of Protection of Rights without Borders NGO  A. Melkonyan

On behalf of Helsinki Citizens' Assembly Vanadzor  A. Sakunts

On behalf of Transparency International Anti-Corruption Center  S. Ayvazyan

On behalf of Law Development and Protection Foundation  G. Petrosyan

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17 June 2020

COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by Open Society Foundations-Armenia, Protection of Rights without Borders NGO, Helsinki Citizens Assembly of Vanadzor, Transparency International Anticorruption Center, Law Development and Protection Foundation

CASE OF VARDANYAN AND NANUSHYAN v. ARMENIA (*Application no. 8001/07*)

1. This case concerns violations of Article 6 of the European Convention on Human Rights (hereby "**the Convention**") and Article 1 of Protocol No. 1 of Convention in the context of expropriations of private property for public interest in Yerevan.

2. In the abovementioned judgment of 27 October 2016 the Court found violations of:
   - *The right to a fair trial* due to the breach of the principle of legal certainty reviewing the final judicial act in favour of the Applicant, and equality of arms, as well as lack of a fair hearing by an impartial tribunal.
   - *The right to property* as the Applicant was deprived of his land through the review of the final judicial act and deprivation of house was not carried out in compliance with conditions provided by law.

3. This submission is made in response to the Armenian Government's Action Plan of 4 June 2020 concerning the case. With this statement the signatory organizations provide the Committee with information regarding the progress made and prevailing challenges in Armenia concerning the issues raised by the European Court of Human Rights ('the Court'), and the adequacy of the steps made or envisaged by the authorities for the effective implementation of the judgment.

4. Regarding the protection of the right to property, the Armenian Government referred to the *Minasyan and Semerjyan group of cases (no. 27651/05)*. The signatory Organizations submit that the general measures adopted by the Government in *Minasyan and Semerjyan* group of cases, including those as amendments to the legislation on providing the procedure of expropriation of property for the public and state interest and the provision of prior equivalent compensation were not sufficient and appropriate to prevent further similar violations.

5. Although the Law on Expropriation of Property for the Prevailing Public Interests (hereinafter: the Law) provides the principles and purposes for deciding the "exceptional prevailing public interest", those are not sufficiently clear in order to struck fair balance between the interests of public and the person concerned.

6. The Law does not provide for sufficiently clear and foreseeable procedure of recognition of prevailing public interest as well as for procedure expropriation of the property under the scheme of exceptional prevailing public interest to ensure proper protection of the rights of the owners, including prevention of violations.

7. Moreover, although the Law establishes that equivalent compensation should be paid to the owner of the property defining the equivalent compensation as fifteen percent more than the market value of the property (Article 11 of the Law) there is no clear criteria of calculation of the market value for compensation purposes, including by the courts.

8. In the Annual Report on Ombudsman's activities of 2018 the Human Rights Defender (Ombudsman) of Armenia stressed that the Law does not provide for effective guarantees for the protection of the right to property, including lack of proper supervision mechanism over expropriation process and limited subsidiary liability of the State relating only to the failure of the acquirer to perform certain contractual obligations.[1]

9. The Ombudsman addressed also the issue of provision "prior equivalent compensation" for the expropriated property as the provisions of the Law provides that the property may be expropriated only by the prior equivalent compensation paid (Article 3 of the Law) and that the equivalent compensation can be decided based on the contract between the parties, including the amount of the compensation, mode of payment, procedure, terms and conditions (Article 10 of the Law).

10. In practice such contradictory regulations bring about to situations when the property is expropriated without **prior equivalent compensation** rather based on condition to provide a property to the owner in the new constructed building e**,** but the new property is not provided to the owners.

11. Moreover, other similar instances of expropriations undertaken years after the events pertaining to the facts of this case demonstrate that the Government of Armenia maintains the practice of unjustified expropriations despite the findings of the European Court of Human Rights in a number of cases, including the present case.

12. Particularly, on 22 March 2018 the Government of the Republic of Armenia adopted a decree N 332 (hereby "**the Decree**") through which it declared public interest for the certain properties in the 33rd district of Yerevan (planned to be built around Firdusi street and hence also called Firdusi district) indicated in the Annexes of the Decree (hereby "**Annexed Properties**")[2]. The Annexed

[1] Annual Report on Ombudsman activities of 2018, pp. 102-106, available at: https://www.ombuds.am/images/files/8f03a4f279d0491fd510fca443f8f269.pdf
[2] https://www.e-gov.am/gov-decrees/item/30135/

Properties include private properties of citizens living in the 33rd district, as well as properties that form part of the cultural heritage of Yerevan.

13. As justification for expropriation on the grounds of public interest, the Decree provides that (a) *the planned construction activities in the territories [indicated in the Annexes] will eliminate the existing irregular constructions which include old and collapsing buildings; (b) that the territories indicated in the Annexes will be formed into a single architectural unit, ensuring harmonious construction compliant with contemporary standards, creating an underground parking for easing the congestion in the streets of the centre; (c) that the planned construction works will make it possible to ensure proper transportation, irrigation and meet other essential needs of the city.*

14. However, the planned expropriation is problematic from a number of perspectives, including: (1) there have been irregularities in the entire process from the project confirmation, the selection of the head architect, the construction companies and the investors; (2) the Annexed territories include properties of cultural heritage dating back to the 19th and 20th centuries and some buildings have not undergone proper assessment as to their cultural value as a result of which they were not included among the list of cultural monuments[3][4][5]; (3) that no compensation or insufficient compensation was provided to the owners of the Annexed Properties. Moreover, most of these families had signed contracts to receive apartments in the new district to be built in the place of their properties, however the terms of these contracts are long overdue, no construction works have been carried out, and now insufficient compensation is offered to them instead of the promised apartments.

15. There are fundamental concerns as to the entire process of expropriation. Firstly, the main investor relation and sale coordinator of the property at 33rd district was the head and shareholder of "Glendale Hills" company, which has a stained record and was involved in the expropriation processes having already been recognised in breach of the Convention obligations of the Republic of Armenia.[6] He is simultaneously a shareholder of "Dianar" CJSC, which is the founder of almost all the construction companies.[7][8] Secondly, the authorities approved of the project despite the fact that the required documentation had not been submitted in full.[9] Thirdly, and most importantly, there has not been proper public participation in the decision-making process, and the concerns of the habitants of the district, as well as the concerns, alerts and warnings of the community of professionals is being completely ignored by the authorities.

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[3] https://transparency.am/en/statements/view/337

[4] https://transparency.am/hy/news/view/3087

[5] https://www.eng.kavkaz-uzel.eu/articles/51161/

[6] See cases *Tunyan and Others v. Armenia* (app no. no. 22812/05); *Minasyan and Semerjyan v. Armenia (app np.* no. 27651/05).

[7] It is also mentioned that Dianar was selected as sale broker (իրացման միջնորդ) of the properties in a non-transparent process.

[8] https://transparency.am/en/news/view/3087

[9] https://transparency.am/en/news/view/3087

16. The district in question includes brick buildings dating back to the 19th and 20th century Yerevan. It holds as much value as the Tamanyan-Yerevan, the buildings of Soviet modernism and other cultural buildings of the city.[10] Moreover, some of the inhabitants of the district have been living there for generations and it would not be an exaggeration to say that the neighbourhood forms part of their identity.[11]

17. Turning to the cultural heritage aspect of the issue, it is necessary to note that the 33rd district forms part of historic architecture of the city of Yerevan, of the little part that still remains.[12] The planned construction works envisage demolishing some of the buildings that constitute part of the cultural heritage, a factor, which should have been considered in the public interest analysis of the expropriation, and the proper assessment of the cultural heritage value of the 33rd district and the interest of protecting historic buildings in the district. Proper consideration of those factors could not have resulted in the approval of the project at its current form, but should have taken as a core the protection of the cultural heritage buildings and such reconstruction that aligns with the historic atmosphere of the vicinity. Despite not giving a proper consideration to the issue, the authorities currently ignore the claims and the concerns of the professional community and the civil society.

18. Finally, according to the inhabitants of the 33rd district, the amount of compensation to be granted to them is insufficient, especially in light of the financial revenue that it is expected to be gained upon the completion of the project. In this respect, there is no clear information on the principles used in the calculation of the compensation value of the property due to which it becomes increasingly difficult to assess the sufficiency of the compensation. Moreover, there is also no sufficient publicised information as to the number of citizens that have already received compensation.

19. It is essential to note that some historic buildings have already been demolished in the area.[13] Activists have consistently raised the issues, including through protests addressed to the Government. As recently as on 13 June 2020, the Municipality of Yerevan city held an extraordinary session to discuss the fate of the 33rd district. *It is notable that fundamental issues pertaining to the project have been raised during the session, including that the project had not been transparent and had not ensured sufficient public participation, that the community of architects had not been part of the discussions about the project.*[14]

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[10] Statement by the Yervean Heritage Protection Committee and a number of NGOs, 13 June 2020 (available at: https://transparency.am/en/news/view/3087)

[11] For instance, Anahit Pkhrikyan, an inhabitant of the 33rd district, who owns a big garden there, says that her grandparent lived in the district, that it has significant value for her. She also informs that according to the construction plan, it is envisaged to build a 16-storey building in the place of her garden, in her estimates every square meter of the building would be worth approximately 2500-3000 USD, whereas the compensation offered to her was only 650 USD (see minutes 10:15-11:00 of the video in the link).(https://www.youtube.com/watch?v=ICXukbHC54I). She also informed that whenever, after the year 2014, they intended to undertake some improvement works in the area, they have been warned that the district is to be reconstructed and that they should not undertake any improvement activities.

[12] https://www.aravot.am/2020/06/11/1117022/

[13] https://www.aravot.am/2020/06/09/1116574/

[14] One architect participating in the session mentioned that he could not approve of the construction project https://www.youtube.com/watch?v=JDCJMsDroS8

20. Finally, it should also be mentioned that on 18 May 2018, a number of citizens, owners of the Annexed Properties, challenged the legality of the Decree. As of now, there is no final decision as to the merits of the complaint.[15]

21. In this respect, although the Committee of Ministers had closed the examination of similar leading cases of *Poghosyan v. Armenia* and *Minasyan and Semerjyan group of cases* the abovementioned irregularities in the expropriation of private property persisting in the Armenian legislation and practice require further supervision of the execution of general measures in the current case.

22. Thus, we recommend that the Committee of Ministers continue examining the execution of the judgment in the case of *Vardanyan and Nanushyan v. Armenia* in terms of general measures.

On behalf of Open Society Foundations-Armenia  D.Amiryan

On behalf of Protection of Rights without Borders NGO  A. Melkonyan

On behalf of Helsinki Citizens' Assembly Vanadzor  A. Sakunts

On behalf of Transparency International Anti-Corruption Center  S. Ayvazyan

On behalf of Law Development and Protection Foundation  G. Petrosyan

[15] http://datalex.am/?app=AppCaseSearch&case_id=38562071809922359

HEAD OF OFFICE OF THE REPRESENTATIVE OF THE REPUBLIC OF ARMENIA BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

RA, Yerevan, 0010, Republic square, Government house 1

Ms. Clare Ovey

Head of Department for the Execution of
Judgments of the European Court of Human Rights,
Directorate of Human Rights, Directorate
General Human Rights and Rule of Law,
Council of Europe, F-67075 Strasbourg Cedex, France

Yerevan, 25 June 2020

Subject: Case of Vardanyan and Nanushyan v. Armenia (application no.8001/07 - Judgment of 27 October 2016, final on 6 March 2017.

Dear Ms. Ovey,

With reference to the joint communication (Communication) of 17 June 2020submitted by 5 NGOs with regard to the execution of *Vardanyan and Nanushyan* case, the Government of the Republic of Armenia brings to the attention of the Committee of Ministers the following comments.

The Government appreciates the role of civil society organisations for protection and promotion of human rights and emphasises the importance of constructive cooperation with them. At the same time, the Government strongly believes that Rule 9.2 of the *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements* should serve the purpose of ensuring the execution of judgement(s) in question, and should not adversely affect the process of the execution. The assessment that the domestic authorities fail to guarantee full and effective execution of a specific judgment cannot be grounded on the presumption that certain situation or facts may lead to violation of person's fundamental rights and freedoms, unless the violation is established by the judgment of the Court. The conclusions of the Court are based on the particular circumstances of each case and under Article 46 § 2 of the Convention the Committee of Ministers shall supervise the execution of the final judgments of the Court.

To avoid any uncertainties the Government ascertains that it is mindful of the fact that the field of human rights protection requires continuous effort and attention, as well as time to assess the effectiveness of the measures already undertaken. The Government is decisive and committed to bringing the field in line with the international standards. However, the steps undertaken and the results already achieved shall not be disregarded.

Turning to the data submitted by the co-signing organisations, the Government, having an aim to avoid any unnecessary repetitions, reaffirms the information submitted in the Action Report[1]. That said, some allegations presented shall be commented on separately.

In general, the Government notes that the allegations made and the situations presented in the Communication have no direct link to the violation found in the case of *Vardanyan and Nanushyan v. Armenia*.

The Government finds it necessary to emphasise that the violation of Article 1 of Protocol No. 1 found in the instant case is repetitive by its nature. The root causes thereof have been examined in a number of identical complaints brought against the Republic of Armenia (for more details, see *Minasyan and Semerjyan* (27651/05) group of cases), where the Court concluded that the deprivation of property at the material time was not carried out in compliance with "conditions provided for by law" since there had not been a specific law on the entire expropriation procedure and the whole process had been regulated by Government decrees. That is to say, the root causes of the violation were clearly linked to the absence of law.

Here, the Government recalls that the process of legislative amendments regarding the issue under consideration has been launched even before the Court delivered its first judgment in respect of the expropriation cases. Thus, a Law on "Expropriation for the Needs of Society and the State" (the Law) was adopted in 2006 regulating the entire expropriation procedure (conditions for expropriation; types of property subject to it; compensation; judicial proceedings deciding on the expropriation; rights of the owner and guarantees thereof). Furthermore, the Government would like to reiterate that in 2009 the Law was subjected to a constitutionality test. In decision no. SDV-815 (ՍԴՈ-815) of 14 July 2009, the Constitutional Court has reiterated that compulsory alienation of ownership is possible only when there is a society and state need related to the prevailing public interest. In addition, it set guidelines for domestic courts: the court, first of all, shall examine: a) whether there is a society and state need to alienate the property at issue; b) whether that need is conditioned by prevailing public interest. Only after considering these questions, the expropriation procedure can have further development prescribed by law (for more details, see DH-DD(2015)1088).

Not only specific regulatory framework has been enacted, but also Constitutional guarantees have been strengthened as well. Hence, further to 2015 Constitutional amendments, in line with the Convention and the Court's well-established case-law, it is clearly stipulated that any interference shall be lawful and justified, i.e. a fair balance must be struck between the general interests of the community (public interests and the fundamental rights and freedoms of others) and those of the individual (for more details, see DH-DD(2016)1226).

Turning to the quality of the Law, the Government strongly disagrees with the allegations made in the Communication. The signatory organisations allege that the Law is not sufficiently foreseeable, accessible and precise. They fail to bring any objective data to substantiate their position. Whereas, the Government would like to highlight that before closing the supervision of *Minasyan and Semerjyan* group of cases in 2015, the Committee of Ministers thoroughly assessed both the information submitted by the Government and the quality of the Law. At the 1186th Human Rights Meeting the Committee of Ministers noted with satisfaction the adoption of the Law and stated that it appears to provide a clear legal framework, as required by the Convention, for deprivation of property in situations similar to the cases at issue.

[1]Reference document: DH-DD(2020)491, last accessed on 25 June 2020.

More of that, in *Osmanyan and Amiraghyan v. Armenia* (71306/11) case the Court, assessing "subject to the conditions provided for by law" criterion, found that the Law is foreseeable, accessible, precise. Special attention was paid to the regulations on determination of the market value of real estate to be taken for the needs of society and the State. The Court was satisfied that the mentioned legal provisions were clear enough to enable the applicants to foresee in general terms the manner in which the market value of their property would be evaluated and found therefore that the applicants were afforded sufficient guarantees against arbitrariness.[2]

Therefore, in the light of the foregoing information and in the absence of any objective data and criteria presented by the co-signing organisations, the Government cannot but conclude that the assessment regarding the quality of the Law is arbitrary and speculative by its nature.

Turning to the remarks on the practical application of the existing legislative framework and, in particular, the episodic observations about Government Decree N 332 adopted on 22 March 2018, although they are not connected to the instant case and cannot in anyway affect the execution process thereof, the Government, will anyway, present some comments.

In particular, the Government expresses its concern in this regard since the signatory organisations are:

- raising and discussing a situation which is currently pending at the domestic level and has not been yet subject to final domestic legal assessment;
- providing incomplete and distorted information about ongoing expropriation process which has no direct link to the case at issue.

It is quite disappointing that the signatory organisations are not aware of or do not want to provide accurate information about the planned expropriation process at 33rd district. To be more precise, the objective data proves that contracts have been already signed with around 250 families, negotiations are in progress with 30-40 families and only 5 families rejected signing a contract.

More of that, Government Decree N 322 prescribes specific conditions of expropriation procedure and compensation mechanisms especially highlighting that "*It is necessary to exclude the possibility of providing property units to the owners from the buildings to be built in the future as a form of compensation".*[3]

In addition, in June 2020 during his speech at the National Assembly, Deputy Prime Minister emphasised that the issue of providing housing for 438 families from 33rd and other districts has been resolved. Some were given monetary compensation, others – apartments.[4] As one of the successful examples it can be mentioned that eight apartments in the newly built building on Argishti Street have been provided as compensation to a family for the expropriation of 815-square-meter property owned by them.[5]

While signatory organisations state that there has not been proper public participation in the decision-making process and the concerns of the habitants of the district, as well as the concerns, alerts and warnings of the community of professionals are being completely ignored by the authorities, the Government would like to inform the Committee of Ministers that the initial expropriation draft plan has been amended taking into account public discussions around 33rd district (the Firdusi district). As the Head of the Office of Deputy Prime Minister says "*This is an unprecedented example, because the Government*

[2] *Osmanyan and Amiraghyanv. Armenia*, no. 71306/11, §§ 51-59, 11 October 2018
[3] Reference document: Government Decree No 322 part 3, point 2, last accessed on 24 June 2020.
[4] https://www.facebook.com/2079323389038737/posts/2504223643215374/, last accessed on 24 June 2020.
[5] https://www.facebook.com/ArmPublicTV/videos/2362373067396289/, last accessed on 24 June 2020.

has held public discussions on the matter and willing to address the public's concerns promptly amended the draft".[6]

Further on, the Deputy Prime Minister addressed the issue of historical monuments and mentioned that there is an instruction that the historical and cultural monuments should be removed from the expropriation program, and if there are one or two in that list, they will be removed. As for the buildings that can be considered as historical and cultural monuments, the Government is trying to provide targeted solutions.

It was further decided to:

- Preserve the monuments adjacent to Hanrapetutyan and Tigran Mets streets,
- Redevelop the facades of the buildings; create a new, harmonious tourist environment for the given areas with 2-4 story historic buildings, wooden balconies, and 200-meter long pedestrian area.

Moreover, the Government is discussing the creation of museums of famous cultural figures in the territory of the historical site.[7]

To conclude, the root causes of the violation found in the instant case have been eliminated, the Law has been subjected to constitutionality test, both the Committee of Ministers and the Court assessed its quality, the practical application of the Law is not connected to and cannot adversely affect the execution process of this case, whereas any remarks on ongoing execution processes are premature and at this stage any comments which can somehow negatively affect the domestic proceedings should be avoided. More of that, at present there are other cases regarding Armenia pending execution the circumstances of which have taken place after the adoption of the Law and the issues regarding practical application thereof can be supervised by the Committee of Ministers in the framework of those cases.

Thus, the Government reaffirms its position and considers that measures adopted have fully remedied the consequences of the violation of the Convention found by the Court in the case in question, that these measures will prevent similar violations and that Armenia has thus complied with its obligations under Article 46 § 1 of the Convention.

Sincerely,

Liparit DRMEYAN

Cc: Permanent Representation of Armenia to the Council of Europe

[6] Ibid, see minutes 2:12- 2:36 of the video in the link.
[7] https://www.facebook.com/2079323389038737/posts/2505620129742392/, last accessed on 24 June 2020.