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Introduction

Ubi jus ibi remedium

Genocide "is not just a mere violation of international law engaging inter-state responsibility, but the gravest criminal violation of international law engaging, as the International Court of Justice has determined, international responsibility *erga omnes* – an obligation of the State toward the international community as a whole. [2] Thus, the international crime of genocide imposes obligations not only on the State that perpetrated the genocide, but also on the entire international community: (a) not to recognize as legal a situation created by an international crime, (b) not to assist the author of an international crime in maintaining the illegal situation, and (c) to assist other States in the implementation of the aforementioned obligations."[3]

These are contemplations of an American lawyer and historian, retired Chief of Petitions at the Office of the UN High Commissioner for Human Rights, Alfred de Zayas on genocide in his book about Armenian Genocide. As we know, during World War I, beginning from 1915 the most heinous plan of annihilation of Armenians in the Ottoman Empire was accomplished. Alongside with systematic and organized massacres Armenian population was being deprived of all possible kind of properties: real estate, working shops, bank accounts, jewelry etc. When the Ottoman Empire entered the World War I, the government enacted a series of Temporary Laws aimed at facilitating the campaign of property confiscation, which was justified by the dire necessity of providing the Ottoman Army with required supplies. Initially Armenians were assured by the Turkish government that they would be fairly compensated for the confiscated property and protective measures would be taken to safeguard their property rights. However, things occurred different in practice: part of Armenian property was pillaged, another part sold in auctions or distributed to Turks, nomads, Kurds and other Muslim population. There was no proper assessment of property's value even accomplished.

The situation was not improved or corrected by Turkish Republic which was the successor of the Ottoman Empire. On the contrary, a series of laws were enacted by the Grand National Assembly authorizing the transfer of properties of non-Muslims to the Turkish government, prohibiting the return of Armenian deportees to Cilicia and Eastern Turkey as well as depriving of Turkish citizenship "those Ottoman subjects who, in the course of the war for independence, did not take part in the national struggle, who remained abroad, and who have not come back to Turkey between July 24, 1923, and the date of the promulgation of this law".[4]

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[2] *Barcelona Traction (Belgium v. Spain),* app. No 1962 (ICJ, 5 of February 1970)

[3] Alfred de Zayas, *The Genocide against Armenians 1915-1923 and the Relevance of the Genocide Convention* (Haigazian University, 2010)

[4] Mary Mangigian Tarzian, *The Armenian Minority Problem 1914-1934. A Nation's Struggle for Security (*Atlanta, Ga: Scholars Press, 1992)

So, Armenians were unlawfully deprived of their properties, their basic, inalienable and natural right to property was brutally violated and no actions were undertaken either by Ottoman Empire, or by the Republic of Turkey to recover it. "A general principle of international law stipulates that a State is responsible for injuries caused by its wrongful acts and bound to provide reparation for such injury".[5] In the Chorzow Factory Case Permanent Court of International Justice has stated that "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form".[6]

Though approximately a century has passed from those notorious events this issue is still urgent. Nowadays descendants of those Armenians, as their legal successors, are still trying to seek appropriate remedies for restoration of their violated rights. Recently some of those descendants have filed several suits in US Federal courts "against the Republic of Turkey and two of its major banks demanding compensation for properties confiscated from Armenians after the 1915 Genocide".[7] However, whatever decision the U.S. courts reach, the aspect of sovereign immunity of Turkey from foreign court decisions will prevent their enforcement. The most plausible and reasonable way to reach the desirable result, i.e. make Turkey compensate victims or their descendants for the confiscated properties, is to apply to an institution to which Republic of Turkey is party and which is entitled to make authoritative decisions mandatory for compliance. Such forum can be ECtHR.

The aim of this paper is to address the issue of possibility of successfully claiming genocide reparations from Turkey before the European Court of Human Rights. For finding out whether the victims of expropriations can claim compensation in European Court of Human Rights ('the Court') I am going to examine respective cases where analogous issues have been determined. Particularly, it is revealed in *Pressos Compania Naviera S.A. and others v. Belgium* that taking a property from the owner without reasonable compensation is a violation. In *Jahn and others v. Germany* the Court found that the lack of compensation is not per se a violation if there are exceptional circumstances justifying it. This possibility was first accepted by the Court in *Lithgow and others v. The United Kingdom* where it stipulated that depriving a person of property must strike a fair balance between demands of general public interests and individual's fundamental rights. Though these cases may seem contradict each other, indeed they are mutually complementing and we will analyze how they apply to Armenian case.

Other group of cases is adduced for exploring the feasibility of application of the Convention to the facts preceding the ratification or even drafting of this Convention. In *Acimovic v. Croatia* and in

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[5] Alfred de Zayas, *The Genocide against Armenians 1915-1923 and the Relevance of the Genocide Convention* (Haigazian University, 2010)

[6] *Germany v. Poland*, judgment No. 8 (PCIJ, 26 July 1927), para. 55

[7] Harut Sassounian, *'US Court to Rule on Turkish Banks' Motion to Dismiss Armenian Lawsuits' (December 6th, 2011)* <asbarez.com/99681/us-cuort-to-rule-on-turkish-banks'-motion-dimiss-armenian-lawsuits/>

Bletic v. Croatia the Court concluded that such application is not possible as it would violate general principles of international law. However, in *Loizidou v. Turkey*, *Cyprus v. Turkey, Almeida Garrett v. Portugal, Broniowski v. Poland and Preussische Treuhand GmbH & Co. KG a.A v. Poland* the Court admitted that in the cases of continuous violation retroactive application of the Convention is possible. Importantly facts in the latter two cases have started before the Convention was drafted.

For the purposes of the current research the unlawful expropriations of Armenian property will be referred to as 'Armenian case'. The instant research may ultimately assist those who have suffered from the unlawful actions, i.e. deprivation of properties without any compensation, of the Ottoman Empire and subsequently Republic of Turkey in determining to claim violation of the right to property before the Court and in assessing whether their case falls under the Court's jurisdiction. For that purpose first of all evidence concerning expropriation of tremendous amount of Armenian property is adduced and examined. Then the issue of existence of the right to property in the Armenian case is investigated. In the third chapter the compatibility of the Armenian case with the Court's jurisdiction is decided.

Chapter 1

Expropriation of Armenian Property

It is well-known fact that Armenians' role and contribution in developing of Turkish Economy was immense. Bedross Der Matossian for emphasizing and illustrating the significance of Armenian element in Turkish economy uses the term 'Armenian economy' as an "integral part of the Ottoman economy"[8] in his article. Approximately ninety percent of the trade and businesses including in the bank sphere was carried out by Armenians.[9] It will not be an exaggeration if we state that Armenians together with Greeks and Jews were the driving force of the Turkish economy. Among Armenians there were many bankers, financials, merchants, craftsmen, mechanics, doctors and prominent architectures. Some Armenians were owners or managers of factories, e.g. Arakel Dadian was the manager of gunpowder factory or Hovhannes Dadian established imperial silk mill, Kafkians built and managed shipyard and so on.[10] Armenian "business network" included almost every major city of Turkey and it was continuing to expand.[11]

When World War I commenced the Ottoman government enacted a number of Temporary Laws, first of which was known as "Deportation Law" stipulating grounds for deportation such as suspicion of espionage, treason or military necessity.[12] The next relevant law enacted was the Temporary Law of Expropriation and Confiscation and several supplementary laws containing instructions how to register properties of deportees, allegedly safeguard them, how to conduct public auctions revenues from which should have been returned to the owners when the latter returned home after the war was ended. Another law "provided for handling of the debts, credits and assets of the deportees".[13]

Hereby began the broad campaign of property confiscation. At the same time the Council of Ministers of Ottoman Turkey issued several decrees, according to one of them deported Armenians should have been transferred "in comfort, their well being and possessions shall be secured during their voyage, and the expenses to be encountered in their thorough relocation to the allocated places shall be met by the immigrant funds; they shall be given properties and land in proportion to their previous financial and economic means".[14] So, the Government and state officials were liable for the abandoned properties and were assumed to take all necessary measures to protect and

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[8] Bedross Der Matossian '*The Taboo within the Taboo: The Fate of 'Armenian Capital' at the End of the Ottoman Empire*' (2011). European Journal of Turkish Studies <http://ejts.revues.org/index4411.htm>l accessed 25 September 2012, p. 2
[9] Ibid, p. 4
[10] Christopher J. Walker, *Armenia: The Survival of a Nation* (2nd edn, St. Marten's Press, New York, 1990), p. 97
[11] Bedross Der Matossian '*The Taboo within the Taboo: The Fate of 'Armenian Capital' at the End of the Ottoman Empire*' (2011). European Journal of Turkish Studies <http://ejts.revues.org/index4411.htm>l accessed 25 September 2012. p. 5
[12] Vahakn N. Dadrian, *The History of the Armenian Genocide. Ethnic Conflict from the Balkans to Anatolia to the South Caucasus,* (Berghahn Books, 1995), p.221
[13] Ibid., p. 222
[14] Bedross Der Matossian '*The Taboo within the Taboo: The Fate of 'Armenian Capital' at the End of the Ottoman Empire*' (2011). European Journal of Turkish Studies <http://ejts.revues.org/index4411.htm>l accessed 25 September 2012, p. 6

safeguard those possessions. For that purpose special Committees were created. Local governments were supposed to send abandoned properties or revenues from the sale of that properties, particularly immovable ones, to their owners to places were the population resettled. Before their departure Armenians were given receipts of their confiscated properties, which were the proof that they have certain rights toward particular property and which should entitle them subsequently to regain their movable or immovable property in natura or in monetary form. Copies were kept by the local committees and other copies forwarded to the Ottoman Treasury.[15] So in reality, there should have been done everything to secure deportees' security and inviolability of their properties. Provisions and conditions of abovementioned laws were to be implemented by specially established commissions.

However, there were several articles in the supplementary law which gave rise to contradictions. Particularly article 11 stipulated "Migrants will be resettled in evacuated villages and the existing houses and the land will be distributed to the migrants through temporary documents by taking into consideration the capacity of work and demands of the migrant families". Article 12 stated that "the places of origin, settlement date, and resettlement places of the migrants will be registered in detail on the basis of their registers by the houses they move into. Furthermore, the houses, as well as the type, amount, and value of the land given to them, will be separately registered and the migrants will be given a document showing the quantity of land and property given to them". [16] As Matossian mentions in his article, the word 'migrants' referred obviously not to Armenians but to the Muslims who subsequently moved to evacuated villages, houses which were occupied by Armenians before the so called 'deportation'.[17] Thus, there were established general instructions and rules of transferring properties of Armenians to Muslim population which is principally incompatible with the first 10 articles setting forth instructions on registration, protection of Armenian properties, how to dispose of some of properties through the public auctions with the aim of giving the revenue to the owners and so on.

The Council of Ministers issued another law, known as Liquidation Law, which set forth the means and rules of administration of Armenian properties and lands. Senator of Ottoman Parliament Ahmed Riza challenged the "Abandoned Property" law stating that the expropriation of Armenians unlawful, the manner of its implementation unconstitutional. He was claiming that nobody can sell other's property against the latter's will and that Armenians were not abandoning

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[15] Dickran Kouymjian 'Confiscation of Armenian Property and the Destruction of Armenian Historical Monuments as a Manifestation of the Genocidal Process' retrieved at http://armenianstudies.csufresno.edu/faculty/kouymjian/articles/confiscation.htm, accessed 28 October2012

[16] Bedross Der Matossian '*The Taboo within the Taboo: The Fate of 'Armenian Capital' at the End of the Ottoman Empire*' (2011). European Journal of Turkish Studies <http://ejts.revues.org/index4411.htm>l accessed 25 September 2012, p. 8

[17] Ibid.

their properties voluntarily but were forcibly being exiled, removed from their houses, villages, towns.[18]

However, notwithstanding various safeguards stipulated in the aforementioned laws, things were totally different in practice. In reality most of immovable properties were looted and pillaged by mobs, consisted of Turks, Kurds and nomads. Special commissions which were created with the mission of protecting abandoned possessions, conducting a careful registration of those properties and organize public auctions with appropriate appraisal of properties did not serve their purpose. As American Consul Heizer reported to ambassador Morgenthau Armenian houses were being emptied without proper classification of goods, without required "labeling or systematic storage".[19] The Commission was selling Armenian properties without proper evaluation at very low prices. Moreover, records kept by commissions concerning quantity, value of Armenian property were frequently being changed and falsified. In the result Muslims many of which were living "on the slopes of the hills, occupy themselves with their flocks" removed to more prosperous houses and apartments of deported Armenians.[20] So, Muslims were being enriched "at the expense of their more intelligent and thriftier compatriots".[21]

After the end of war the Ottoman Parliament declared acts committed against Armenians during World War I as 'crimes against humanity'. Subsequently 'Temporary Laws were declared illegal' and 'Armenian deportations and sale of deportee's property were annulled'.[22] On 10 of August 1920 Treaty of Sèvres was signed. Here Turkey made several statements and undertook some commitments concerning Armenian abandoned properties. According to article 144:

"The Turkish Government recognizes the injustice of the law of 1915 relating to Abandoned Properties (Emval-i-Metroukeh), and of the supplementary provisions thereof, and declares them to be null and void, in the past as in the future. The Turkish Government solemnly undertakes to facilitate to the greatest possible extent the return to their homes and re-establishment in their businesses of the Turkish subjects of non-Turkish race who have been forcibly driven from their homes by fear of massacre or any other form of pressure since January 1, 1914. It recognises that any immovable or movable property of the said Turkish subjects or of the communities to which they belong, which can be recovered, must be restored to them as soon as possible, in whatever hands it may be found. Such property shall be restored free of all charges or servitudes with which

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[18] Vahakn N. Dadrian, *The History of the Armenian Genocide. Ethnic Conflict from the Balkans to Anatolia to the South Caucasus,* (Berghahn Books, 1995), p. 224

[19] Ara Sarafian, *United States Official Documents on the Armenian Genocide: Volume II: The Peripheries* (Armenian Review Watertown, Massachusetts 1994), p. 27

[20] Christopher J. Walker, *Armenia: The Survival of a Nation* (2nd edn, St. Marten's Press, New York, 1990), p. 96

[21] Ara Sarafian, *United States Official Documents on the Armenian Genocide: Volume II: The Peripheries* (Armenian Review Watertown, Massachusetts 1994), p. 69

[22] Bedross Der Matossian '*The Taboo within the Taboo: The Fate of 'Armenian Capital' at the End of the Ottoman Empire*' (2011). European Journal of Turkish Studies <http://ejts.revues.org/index4411.htm>l accessed 25 September 2012, p. 11

it may have been burdened and without compensation of any kind to the present owners or occupiers, subject to any action which they may be able to bring against the persons from whom they derived title".[23]

Unfortunately, Treaty of Sèvres was not ratified and was substituted by the Treaty of Lausanne. So the commitments of Turkey were not accomplished. However the mere statement of Turkey that it recognizes the law of Abandoned properties unjust and declares them void and null and that "terrorist regime" existed in Turkey since 1914 and "massacres" were committed during the war against "individuals" which was made on the international level is an important fact and may be considered as unilateral declaration by Turkey which should have had some legal consequences. Moreover, "the text of the Treaty remains eloquent evidence of the international recognition of the crime of "massacres" against the Armenian population of Turkey."[24]

However, flagrant violations of the most important and fundamental rights of Armenians did not receive their remedy even after the collapse of Ottoman Empire, which was replaced by the Republic of Turkey. Later, on April 15, 1923, another "Law of Abandoned Properties" was enacted stipulating that properties of all the non-Muslims who had left before the Treaty of Lausanne would pass to the Turkish government. So, Ottoman Turkey's policy of expropriation of Armenians' properties was adopted and continued by the Republic of Turkey. Armenians deported from Cilicia and Eastern provinces of Turkey were prohibited to return to Turkey after the ratification of Lausanne treaty. Another law was enacted in on May 1927 stating that "Ottoman subjects who during the War of Independence took no part in the National movement, kept out of Turkey and did not return from July 24, 1923 to the date of the publication of this law, have forfeited Turkish nationality".[25] These laws were supplemented by another one passed on May 28, 1928 stipulating that "those who are deprived of their Turkish citizenship shall be expelled if they are in Turkey. The return to Turkey of all persons deprived of their Turkish citizenship is prohibited. Their property is subject to liquidation by the government".[26] The ultimate purpose of these series of laws was to deprive Armenians of all kind of their properties and prevent them from claiming restitution or compensation for confiscated properties. So, the Ottoman Government and subsequently the Republican Government used law and legality to create injustice, which is unacceptable.

There were several trials held in the Ottoman Turkey after the end of WWI. Some of the main organizers of Armenian genocide were found guilty in absentia for "the organization and execution of the crime of massacre." During subsequent trials three perpetrators were convicted of "the crimes of massacre, pillage and plunder" on the basis of article 171 of the Ottoman military code

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[23] Treaty of Sèvres, 10 August 1920, art. 144

[24] Alfred de Zayas, *The Genocide against Armenians 1915-1923 and the Relevance of the Genocide Convention* (Haigazian University, 2010), p. 4

[25] Bedross Der Matossian '*The Taboo within the Taboo: The Fate of 'Armenian Capital' at the End of the Ottoman Empire*' (2011). European Journal of Turkish Studies <http://ejts.revues.org/index4411.htm>l accessed 25 September 2012, p. 12

[26] Ibid.

concerning the offence of plunder of goods, and "the sublime precepts of Islam" as well as of "humanity and civilization"[27]. This was the only expression of endeavor of establishing justice and there was no try to recover violated basic rights of the victims of genocide among which were their right to property and compensation stipulated in the same Temporary Laws.

As later it became clear the principal goal of abovementioned confiscation campaign was to wipe out Armenians from the territory of Turkey under the guise of war. Every measure was taken in order to assure that those Armenians who had survived the genocide would have no right and no place to return to. Those laws which were legalizing deprivation of property and which were subsequently recognized as unjust, null and void by Ottoman and Republican Turkey, were directed primarily against Armenians and were of discriminatory character. The argument that the liquidation of those properties was necessary for financing the war providing supplies to the army cannot be valid, as only properties of Christians and mostly Armenians were affected, and from the same income from the sales of those properties financing of the deportations and massacres was being implemented.

It is a well-known and well-established fact that events that have taken place since 1915 were committed with genocidal intentions. Those deportations accompanied with ruthless massacres and annihilation of the exiled Armenian population as well as with appropriation, pillage and plunder authorized, organized and encouraged by the Ottoman Government shocked public conscience and cannot by any means fit within the usages of civilized peoples and laws of humanity. The latter three standards, i.e. correspondence to "the usages established among civilized peoples, the laws of humanity, and the dictates of the public conscience"[28], are the minimal requirements with which states must comply during armed conflict. They were at that time stipulated in the preamble of the Hague Convention 1907 and are known as Martens clause. So, the Turkish government realized that its actions were wrong and punishable, when they were planning and committing genocidal actions against Armenians.

Prohibition of genocide is considered to be jus cogens norm.[29] Besides it has been declared as an erga omnes obligation in *Barcelona Traction* by the International Court of Justice. It is for these reasons that there cannot be any territorial and time limitations for making responsible those who have been engaged in genocidal actions. In the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity it was established that no statutory limitation shall apply, inter alia, to the crime of genocide, notwithstanding the date of its commission. Professor A. Zayas asserts making reference to General Assembly's Resolutions that that "there is no prescription on the prosecution of the crime of genocide, regardless of when the

[27] Alfred de Zayas, *The Genocide against Armenians 1915-1923 and the Relevance of the Genocide Convention* (Haigazian University, 2010)p. 5
[28] Hague Convention 1907. Preamble
[29] Ian Brownlie, Principles of Public International Law (7th edn Oxford University Press, 2008), p. 511

genocide occurred, and the obligation of the responsible State to make restitution or pay compensation for properties obtained in relation to a genocide does not lapse with time".[30]

As a general principle of international law every state "is responsible for injuries caused by its wrongful acts and bound to provide reparation for such injury."[31] This principle was declared by the Permanent Court of International Justice in the *Chorzow Factory Case* in the following way: "it is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form".[32] In other words the criminal should not be permitted to keep the fruits or benefits of the committed crime (ex injuria non oritur jus) and bears an obligation to make a restitution or compensation to the victims of the crime. On the other hand there is an obligation "not to recognize as legal a situation created by an international crime."[33] Armenian population of Turkey was unjustly deprived of its possessions and this campaign of expropriation was a part of more heinous plan of annihilation of Armenians as an ethnic group from the territory, political socio-economic life of Turkey, i.e. genocide. It was not just a mere violation of property rights of Armenians, but the gravest violation of international law and an erga omnes obligation and accordingly "the results of erga omnes crime cannot be legalized."[34]

According to the customary International law a state responsible for violation of international law is required to make full reparation for loss or injury inflicted by an internationally wrongful act. [35] Such injury can be in the form of full restitution (*restitutio in integrum*), the purpose of which is to "re-establish the situation that existed before the wrongful act was committed… provided that this is not "materially impossible". If restitution is materially impossible or the damage is not covered sufficiently by restitution or the latter is unavailable or inadequate, a state should make compensation. "The role of the compensation is to fill gaps so as to ensure full reparation for damage suffered." When the damage cannot be fully recovered by restitution or compensation there is a third form of reparation known as satisfaction. It may "consist in acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality."[36]

Before seeking reparations for material losses incurred by Armenians it is crucial to reveal the amount of material losses expressed in monetary value. After the war in 18 January 1919 the Paris Peace Conference commenced its work in order to examine and consider all issues concerning the war and prepare Peace treaties. One of the most important issues was reparations by the states

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[30] Alfred de Zayas, *The Genocide against Armenians 1915-1923 and the Relevance of the Genocide Convention* (Haigazian University, 2010), p. 9

[31] Ibid., p. 12

[32] *Chorzow Factory Case (Germany v. Poland),* Judgment No. 8 (26 July 1927), para. 55.

[33] Alfred de Zayas, *The Genocide against Armenians 1915-1923 and the Relevance of the Genocide Convention* (Haigazian University, 2010), p.13

[34] Աբա Պապյան. Հայոց Պահանջատիրության Իրավական Հիմունքները. Հոդվածների ժողովածու (3-րդ հրտ. Երևան 2009), էջ 71

[35] *Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001) art. 31; Chorzow Factory Case (Germany v. Poland),* Judgment No. 8 (26 July 1927)

[36] Jean-Marie Henckaerts, Loise Doswald-Beck. *Customary International Humanitarian Law: Volume I: Rules* (Cambridge University Press, 2009), pp. 539-541

responsible for the instigation of war. So, "The Commission on Reparations of Damage, of the Preliminary Peace Conference, has charged a special Committee with the gathering together of claims which may be made against the enemy Powers". The Armenian delegation has also applied to that Commission requesting information about the caused material damage. After one month of work the Commission presented its preliminary report, according to which the approximate amount of damage caused during 1914-1919 to the Armenians was 19.130.982.000 French Francs or 3.693.239.768 USD. Importantly this number does not include the amount of damage inflicted during 1920-1922. A. Papian claims that in the case of considering the latter damages the abovementioned number would be increased in 15-20%. He also claims that considering the factor that 1 Franc of the period of WWI nowadays equates 2.17 USD, the amount of damages would be 41.514.230.940 USD (19.130.982.000 x 2.17).[37]

So, many Armenians were unjustly deprived of their properties and incurred immense losses. Till nowadays most of them or their descendants have not succeeded in claiming reparations for confiscated properties from Turkey. There have been several researches carried out for resolving this issue which have considered the options of application to the ICJ or creating an ad hoc Tribunal and others. In the next chapters the possibility of taking the current case to the ECHR and succeeding there will be explored.

Chapter 2

[37] Աբա Պապյան. Հայոց Պահանջատիրության Իրավական Հիմունքները. Հոդվածների Ժողովածու (3-րդ հրտ. Երևան 2009), էջ 73

The Right to Property under ECHR

Before determining whether the right to property guaranteed and protected by the article 1 of the Protocol No. 1 has been violated it is important to understand what this right encompasses according to the ECHR and case law of the European Court of Human Rights. According to the article 1 of the Protocol No. 1:

"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."

This article provides three rules:

- the principle of peaceful enjoyment of property or possession,
- conformity of the deprivation of property to certain rules, and
- the right of the state to control the use of the property in compliance with the public interest.

The notion of 'possessions' has a broad interpretation by the Court and besides land, immoveable and moveable property includes "rights arising from shares, patents, arbitration award, established entitlement to pension, rights arising from running of a business".[38] It also includes hunting rights over land, intellectual property rights, the registration of internet domain names, the right to a widow's social security benefit, an entitlement to claim compensatory property, legal claims for compensation and for the restitution of assets[39] and others which the Court has deemed to fit within the meaning of possessions. In the case *Marckx v. Belgium* the Court stated that the "right to dispose of one's property constitutes a traditional and fundamental aspect of the right of property"[40]. However, there is no right to acquire property under the article 1 of the Protocol No. 1, as it applies to the existing possessions. Other assets, including those towards which the applicant can claim to have at least a "legitimate expectation" that they will be realized, can be regarded as possessions.[41] Future income will only be considered as a 'possession' if it has already been earned or where an enforceable claim to it exists.[42]

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[38] Aida Grgić, Zvonimir Mataga, Matija Longar and Ana Vilfan. The Right to Property under European Convention on Human Rights: A guide to the implementation of the European Convention on Human Rights and its protocols. Human Rights Handbooks, No. 10, p. 9

[39] Philip Leach, *Taking a Case to the European Court of Human Rights*,(Third Edition, Oxford Publishing, 2011), p. 415

[40] *Marckx v. Belgium*, App. No. 6833/74, (ECtHR, 13 June 1979), para. 63.

[41]Aida Grgić, Zvonimir Mataga, Matija Longar and Ana Vilfan. The Right to Property under European Convention on Human Rights: A guide to the implementation of the European Convention on Human Rights and its protocols. Human Rights Handbooks, No. 10, p. 9

[42] Philip Leach, *Taking a Case to the European Court of Human Rights*,(Third Edition, Oxford Publishing, 2011), p. 415

In compliance with the abovementioned article the right to property is not absolute and confiscation or 'deprivation' of property can only take place when public interest is established. Such 'deprivation' shall be implemented in accordance with "the conditions provided for by law and by the general principles of international law", additionally, "the individual human rights holder must not be burdened excessively"[43] in the case of such expropriation. So, before interfering with the property right state should find a fair balance between the right of individual and general interest of the community. While examining such issue the Court will consider whether there is a "disproportionate burden on the applicant".[44] In accordance with the principle of proportionality for the measure of interference with the guaranteed right there should be a "pressing social need" at the same time such interference must be proportionate with the pursued goal.[45] Another requirement of permissible restriction of the right to property is lawfulness, i.e. that such limitation be prescribed by law. Importantly, this requirement also means that laws or regulations stating the grounds for restrictions should be accessible, foreseeable and precise. States are entitled to control the use of property in compliance with the general interest and to adopt regulations and penalties securing the "payment of taxes or other contributions".

Thus, states can enact laws restricting one of fundamental rights of a person and it is upon them to determine the content and meaning of public interest. States parties to the Convention have a wide margin of appreciation concerning the means they employ for the public interest and it gives them "a certain degree of freedom as how to comply with their obligations under the ECHR".[46] However, in the case when such freedom of action is provided to the states, there is always a concern that they can try to use their discretion, though limited by the principle of proportionality, to circumvent the Convention. For that purpose there is an appropriate counterbalance for the margin of appreciation – the notion of autonomous concepts. The latter are concepts to which the Court gives an independent interpretation, at the same time the definition of those concepts by national legislations may also be taken into account, however they are not decisive for the Court's determination. Such an autonomous concept is the notion of 'possessions'. The Court has designed the scope of the right to property independently and extended it to such rights as the right to a pension, hunting rights, shares, intellectual property and others, while these rights may not be defined as a part of the right to property or possession by the domestic legislations of the state parties to the Convention.

In *Gasus dosier- und fördertechnik GmbH v. The Netherlands* case The Court concluded that the notion "possessions" (in French: biens) in Article 1 of Protocol No. 1 (P1-1) has an autonomous meaning which is certainly not limited to ownership of physical goods: certain other

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[43] Stefan Kirchner, Katarzyna Geler-Noch 'Compensation Under The European Convention on Human Rights for Expropriations Enforced Prior to the Applicability of the Convention' Jurisprudence, 2012, No 19(1), p. 23
[44] Philip Leach, *Taking a Case to the European Court of Human Rights*,(Third Edition, Oxford Publishing, 2011), p. 418
[45] Philip Leach, *Taking a Case to the European Court of Human Rights*,(Third Edition, Oxford Publishing, 2011), p. 161
[46] Stefan Kirchner, Katarzyna Geler-Noch 'Compensation Under The European Convention on Human Rights for Expropriations Enforced Prior to the Applicability of the Convention' Jurisprudence, 2012, No 19(1), p. 23

rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions", for the purposes of this provision (P1-1)".[47] In another case, James v U.K., The Court found that taking property from one individual and giving it to another for the purpose of enhancing the social justice in the community would amount to the public interest. In the result the Court gave to the notion of public interest an autonomous interpretation. In *Öneryıldız v. Turkey* the applicants' house has been built without required permission on the foot of rubbish tip, then it was destroyed by a methane gas explosion. He did not have a title towards the land which was state owned, so it was not considered to be his possession, however he was acknowledged to be the de facto owner of the house and moveable property. The Court found that "he had a substantial proprietary interest which was tolerated by the authorities and which was held to amount to possessions."[48]

States have negative and positive obligations to respect the right to property. Negative obligation of the state consists in abstaining from any kind of unjustified, unfounded and unlawful interference with the right to property of natural and legal persons. Besides states obligation not to interfere there is also a positive obligation to protect, to implement positive measures of protection "particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and effective enjoyment of possessions".[49] Failure to take appropriate legal action for the protection of the rights of an individual, i.e. omission, may amount to a violation of positive obligation. In the case *Öneryıldız v. Turkey* the State was concluded "to be under the obligation to undertake practical steps to avoid destruction of property as a result of unsafe conditions in a refuse tip".[50]

As it is mentioned above, the right to claim compensation for the confiscated or damaged property is an inseparable part of the right to property. This right was stipulated by the Court in the case *Pressos Compania Naviera S.A. and others v. Belgium*. In this case applicants' ships were involved in collisions in Belgian territorial waters because of the negligence of Belgian pilots. Later Belgian legislature enacted a law retrospectively exempting the State from the liability, which imposed an excessive burden on the applicants. "Retrospective application of the Act deprived the applicants of their claims for compensation in respect of the damage sustained."[51] In the conclusion the Court stated that "taking of property without payment of an amount reasonably related to its value will constitute a disproportionate interference".[52] While calculating the compensation there must be considered whether there is a reasonable relationship between the implemented means

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[47] Gasus dosier- und fördertechnik GmbH v. The Netherlands, 15375/89 (ECtHR, 23 February 1995)
[48] Philip Leach, *Taking a Case to the European Court of Human Rights*,(Third Edition, Oxford Publishing, 2011), p. 417
[49] Aida Grgić, Zvonimir Mataga, Matija Longar and Ana Vilfan. The Right to Property under European Convention on Human Rights: A guide to the implementation of the European Convention on Human Rights and its protocols. Human Rights Handbooks, No. 10, p. 9
[50] Ibid., p. 12
[51] *Pressos Compania Naviera S.A. and others v. Belgium, 17849/91 (ECtHR, 20 November 1995)*
[52] Ibid.

and the aim pursued. In the same decision The Court mentioned that the total lack of compensation can be considered justified only in exceptional circumstances.

Such circumstances have been found by the Court in the *Jahn and others v. Germany.* In this case in the result of change of regimes and unification of Germany new legislation was adopted concerning land reform. In the result many landowners were deprived of their property. The Court acceded that domestic authorities enjoy a wide margin of appreciation and may adopt appropriate measure to satisfy the public interest and only if such measures are arbitrary and have no reasonable foundation The Court "will not respect the legislature's evaluation".[53] It was also stated that "an interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of general interest of the community and the requirements of the protection of the individual's fundamental rights".[54] In other words there should be proportionality between the aim of application of certain measures and means employed to reach this aim. So "an expropriation without compensation does not per se violate the law".[55] The Court did not find violation of the principle of proportionality. It reasoned that the law was enacted by a non-democratically elected parliament to reform the economic sector in the short period of transition between two different political and economic regimes and applicants could not have confidence in the continuity of their title. Subsequently Second Rights Amendment Act was enacted which was aimed at achieving social justice and legal certainty for the title holders. So the Court concluded that lack of compensation was not disproportionate due to exceptional circumstances.

In another similar case, *The Former King of Greece and others v. Greece,* the Court found a violation of the article 1 of Protocol No 1. In this case former King of Greece and his relatives were arguing that the Law, according to which Greek State became the owner of the applicants' property without providing provisions for compensation, has violated article 1 of Protocol No 1. It was stated that the expropriated property was the applicants' private property and accordingly they had a legitimate expectation to be compensated. Moreover, the Government has failed to give a convincing explanation why compensation has not been awarded and did not try to justify the absence of compensation by the existence of exceptional circumstances.[56] So, considering abovementioned circumstances the Court found a violation of the article 1 of Protocol No 1.

In another case known as *Lithgow and others v. The United Kingdom*, the Court has set forth the standards of compensation. It was stated that though article 1 does not specify the availability and amount of compensation, its protection would be largely illusory and ineffective in absence of the

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[53] Ulrike Deutch 'Expropriation Without Compensation – the European Court of Human Rights sanctions German Legislation expropriating the Heirs of "New Farmers" German Law Journal, vol. 06, No10, p. 1374

[54] *Jahn and others v. Germany,app. no* 46720/99 (ECtHR, 30 June 2005), para. 93

[55] Ulrike Deutch 'Expropriation Without Compensation – the European Court of Human Rights sanctions German Legislation expropriating the Heirs of "New Farmers" German Law Journal, vol. 06, No10, p. 1375

[56] *The Former King of Greece and others v. Greece, app. no* 25701/94 (ECtHR 23 November 2000)

principle that taking of property without compensation is justifiable only in exceptional circumstances. Measure depriving a person of property must strike a fair balance between demands of general public interests and individual's fundamental rights and compensation terms are material to the assessment of whether the fair balance have been reached. The Court held that taking of property without payment of compensation reasonably related to its value normally constitutes a disproportionate interference not justifiable under article 1.[57]

In the Armenian case millions of Turkish citizens of Armenian origin were deprived of all of their properties without any kind of proper compensation. The expropriations were taking place in accordance with the Temporary Laws and decrees enacted by Ottoman Government and Parliament. Those laws were providing detailed rules and mechanism of securing the confiscated properties, sending moveable possessions to the places where deportees would have resettled, selling the remaining properties through public auctions and sending revenues to the owners of those properties. So, the expropriated Armenians had a legitimate expectation to be compensated. However it became clear later those expropriations were merely a part of more heinous plan of annihilation of Armenians which subsequently was qualified first by the states of Entente, then the other civilized nations as crimes against humanity and genocide. The Turkish Government's argument was and is that the deportations of Armenians were an indispensible strategy and confiscation of their properties was necessary to provide required supplies to the army. So their argument is that those measures were conditioned by the exigencies of war and public interest. However, the fact that those measures were implemented mainly and intentionally against Armenians and never against Muslims undermines the latter argument. Turkish, Kurdish and nomad families were removed from their less comfortable and very often squalid dwellings to the houses of wealthy Armenians, who during many years and even centuries have prospered and created their wealth. After the end of the war injustice of those laws and illegality of measures applied were acknowledged and condemned by the Turkish Parliament itself and by the most influential states of that time. However the policy of expropriating of Armenian properties was continued and adopted by the successor of Ottoman Turkey, i.e. the Republic of Turkey, as it is mentioned in the first chapter. Ultimately Armenians were unjustly deprived of their possessions. As in the *Former King of Greece* they had a legitimate expectation to be compensated an amount "reasonably related to its value". Concerning the exceptional circumstances, it will be improbable that the Court destined to protect and induce the development of democratic values and principles of humanity would acknowledge condition of war, during which properties were confiscated in conjunction with genocide or systematic massacres directed against a specific ethnic group, as exceptional circumstance capable to justify the complete absence of compensation.

[57] *Lithgow and others v. The United Kingdom, app. no* 9006/80; 92631/81;9265/81; 926681; 9313/81; 9405/81 (ECtHR, 8 July 1986) para. 120-121

Chapter 3

Does the Armenian Case Fall under the Jurisdiction of ECHR

§1. Ratione Temporis and Continuing Violations

In accordance with the general principles of international law, particularly principle of non-retroactivity, the provisions of the Convention cannot bind a State Party in relation to any act or fact which took place or any situation that ceased to exist before the date of the entry into force of the Convention in respect of that State. Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969 provides that, unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.[58] Consequently the jurisdiction of the European Court of Human Rights extends only to those facts and situations that have taken place after the entrance into force of the Convention for the State Party and since that date State's all actions and omissions must comply with the Convention and its Protocols. So, complaints against a state that has not ratified the Convention or accepted individual petition at the relevant date will be declared inadmissible. When the events started before the entry into force and continued after such entry of the Convention into force, only those events that took place after the ratification can be considered by the Court. However, there can be situations when events that have occurred before such ratification may be taken into consideration by the Court. There may be two exceptions to the general rule of non-retroactivity: continuing situations and continuing violations.

In *Sovtransavto Holdings v. Ukraine* the applicant, Russian Transport Company complained of measures taken in order to reduce its shares in the Ukrainian company, in the result of which it lost control over that company. The Government argued that the events complained of took place before the ratification of the Convention by Ukraine. However, the Court held that the measures complained of had been accomplished over a three-stage process, where the final stage took place after Ukraine had ratified the Convention. Ultimately, the Court concluded that this sequence of events created a continuing situation and therefore the application was admissible on the ground of ratione temporis. So, the Court besides examining the events concerning the third stage also took into account the preceding events.[59]

In *Acimovic v. Croatia* the applicant was complaining of the destruction and damage inflicted to his possessions by the Croatian army before the date of ratification of the Convention. The Court held that the destruction of property is considered to be an instantaneous act that does not generate any continuing situation. The applicant also mentioned in his complaint that after the

[58] Vienna Convention on the Law of Treaties,(23 May 1969), UN, art. 28

[59] Philip Leach, *Taking a Case to the European Court of Human Rights*, (Third Edition, Oxford Publishing, 2011), p. 152

ratification of the Convention a legislative amendment was introduced, according to which "all similar proceedings arising out of the actions of the Croatian army" were stayed. However, the Court found the case inadmissible ratione temporis, stating that "although the legislative interference took place after the Convention entered into force in respect of Croatia it was so closely related to the events that gave rise to the applicant's claim that divorcing the two would amount to giving retroactive effect to the Convention which would be contrary to general principles of international law".[60] The same approach was adopted by the Court in *Bletic v. Croatia* where it stipulated that in cases where the alleged violation took place prior to the ratification, and refusal to remedy takes place after the entrance into force, the extension of the Courts jurisdiction to such situation would result in the Convention being binding for that state in respect to a fact that had occurred before the entrance into force of the Convention. So, the Court found the application to be incompatible with the ratione temporis requirement. The Court also held that in order "to adjudicate upon the Court's temporal jurisdiction, it is essential in each case to identify the precise time of the alleged interference, and that to do so the Court must take into account of both the facts of the case and the scope of the Convention right alleged to have been violated".[61] For instance, the Court accepted the possibility of extending its jurisdiction to the facts that have taken place prior to its ratification when no proper effective investigation was conducted by the state in order to find out the reasons of death that had occurred prior to the ratification in *Silih v. Slovenia.* In Varnva and others v. Turkey the Court separated the investigation of killings and disappearances, conferring the latter with continuing character. The lack of information about the disappeared person and uncertainty are prolonging the torment of the victim's relatives. Therefore it cannot be regarded as an instantaneous act and failure to conduct effective investigation will be regarded as continuing violation.[62]

One of the famous cases concerning continuing violations is Loizidou v. Turkey. The facts of this case are the following: Mrs. Loizidou, a Cypriot citizen grew up and lived in Kyrenia in the Northern part of Cyprus, where she owned certain plots of lands. Then she moved to Nicosia leaving behind her possessions. Since 1974 Turkish military forces in Cyprus were preventing her from accessing her properties. The Turkish Government argued, inter alia, that the Court did not have jurisdiction ratione temporis, as events and alleged violations had taken place prior to its ratification of the Convention in 1990 and the applicant has irreversibly lost ownership of her property. The Court held that the applicant cannot be deemed to have lost her property based on the article 159 of the 1985 Constitution of the "TRNC" which was not regarded as a state by the international community under the international law standards, and that she remained the legal owner of the property in the question who was being preventing access to her possessions. In the result she has lost the effective control over her property. The Court held that deprivation of property or a control of use falls within the meaning of the first sentence of the article 1 of the

[60] Ibid.
[61] Ibid.
[62] *Varnava and others v. Turkey, app. no* 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90, 16073/90 (ECtHR, 18 September 2009*)*

Protocol No. 1 as an interference with peaceful enjoyment of possessions and found that "there has been and continues to be a breach" of the abovementioned article.[63]

In an analogous case of *Cyprus v. Turkey* the applicant was complaining of the situation created by the Turkish military operations in the Northern Cyprus since 1974. The respondent state was alleged to have been involved in continuing violations of articles 1-6, 8-11, 13, 14, 17 and 18 of the Convention and articles 2 and 2 of the Protocol No. 1. These were "alleged violations of the rights of Greek-Cypriot missing persons and their relatives; alleged violations of the home and property rights of displaced persons" and some other allegations.[64] The Court found "continuing violation of Article 2 on account of the failure of the authorities of the respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances".[65] Another continuing violation was found concerning art. 3, i.e. inhuman and degrading treatment, towards relatives of the Greek-Cypriot missing persons. Concerning displaced persons they were being prevented from returning their homes situated in the northern Cyprus. In this respect the Court held that there has been continuing violation of art. 8. Besides being deprived of the opportunity to return to their houses and being refused any access to their properties those displaced persons were prevented from "using, selling, bequeathing, mortgaging, developing and enjoying it". As it is mentioned above, the right to dispose of one's property is an inseparable part of the right to property. The Court mentioned that "the continuing and total denial of access to their property constitutes a clear interference with the right of the displaced Greek Cypriots to the peaceful enjoyment of possessions within the meaning of the first sentence of Article 1 of Protocol No. 1".[66] Moreover, no compensation has been paid to those who has "suffered and continue to suffer" interferences into their property rights. Considering abovementioned findings the Court held that there was a continuing violation of the article 1 of the Protocol No. 1.

An important judgment was made by the Court in *Almeida Garrett v. Portugal* case. Mr. Garrett owned three plots of land. Two plots were nationalized and one expropriated in compliance with legislative and ministerial decrees adopted within the scope and for the implementation of agrarian reform policy. In the same way were expropriated the plot of lands of Mascarenhas Falcão family. Those decrees provided that the Government should determine the criteria for evaluating the expropriated or nationalized properties. The applicants have received interim compensation in the form of Government securities or bonds. However, they have not acquired final compensation. The Government claimed that the Court had no jurisdiction ratione temporis to hear the case, claiming that deprivation of property was an instantaneous act which had taken place before the ratification of the Convention by the Portugal. While recognizing the applicants' right to compensation, the Court noted that their complaint did not concern

[63] *Loizidou v. Turkey, app. no* 15318/89 (ECtHR, 28 July 1998)
[64] *Cyprus v. Turkey*,app. no 25781/94 (ECtHR, 10 May 2001), para. 18
[65] Ibid., para. 136
[66] Ibid., para. 187

"deprivation of property, which was indisputably an instantaneous act, but the failure to pay them final compensation" had to be rectified. It was stated that the Court did not have power to examine questions connected with the deprivation of property, as it was beyond its jurisdiction ratione temporis, nevertheless it did not apply to the delays in the assessment and payment of final compensation. It was emphasized that states are responsible for their acts and omissions in respect to rights guaranteed by the Convention after the date of its ratification.[67]

For the purpose of the current research it is important to present the following two cases as well. In the *Broniowski v. Poland* the applicant, a Polish national, was born in 1944 and living in Wieliczka (Poland). The case is about the alleged failure to satisfy the applicant's entitlement to compensation for a house and land in Lwów (currently known as Lviv in the Ukraine) which belonged to his grandmother when the area was still part of Poland, before the World War II. The mentioned property was inherited by his mother, then by the applicant after her death. His grandmother was repatriated with others who had been living in the Eastern provinces, which were at that time within the territory of Poland, after the delimitation of borders between the Soviet Union and Poland after the WWII. The process of repatriation began from 1944. These territories known as "Borderlands" or "territories beyond Bug River" were passed to the Soviet Union. The Polish State according to the agreements with the former Soviet Socialist Republics of Ukraine (1944), Belarus (1944) and Lithuania took upon itself the obligation to compensate persons who were "repatriated" from the "territories beyond the Bug River" and who had to abandon their property there. Compensation would mainly be accomplished on the account of the German lands east of the Oder-Neisse line. However, subsequently several legislative acts were enacted by Poland reducing the pool of state property available to the repatriated persons to claim compensation. In the result the state became unable to accomplish its obligations concerning compensation claims. Determining the ratione temporis jurisdiction the Court held that it has such jurisdiction relating this case, as notwithstanding any "specific measure or decision taken before, or even after… the date of ratification of Protocol No. 1 by Poland", the complaint concerns "the State's failure to satisfy his entitlement to compensatory property which had been continuously vested in him [applicant] under Polish law".[68] It was also declared that the facts prior to the ratification could also be considered "inasmuch as they could be considered to have created a situation extending beyond that date or might be relevant for the understanding of facts occurring after that date".[69]

The Court also examined another analogous case known as, *Preussische Treuhand GmbH & Co. KG a.A v. Poland*, with similar contextual background. Here the applicant was representing the interests of persons or successors of persons living in the frontier regions of the German Reich, which after WWII were included in the territory of Poland. The Polish state intended to resettle these areas with Polish citizens repatriated from the Bug River territories which have been

[67] *Almeida Garret, Mascarenhas Falcão and others v. Portugal*, app. no 29813/96, 30229/96 (ECtHR , 11 January 2000)
[68] *Broniowski v. Poland, app. no* 31443/96 (ECtHR, 22 June 2004), para. 122
[69] Ibid.

annexed to the Soviet Union. So, since 1945 German citizens were being evacuated and the Polish State launched its policy of expropriation of the evacuated Germans by enacting respective laws. "The expropriation laws concerned agricultural and forest land, industry and enterprises and other "post-German" property".[70] However, these persons have not received restitution or compensation for expropriated properties. While discussing the admissibility of this case on the ratione temporis ground, the Court reiterated the main principles found in the previous cases, i.e. that facts prior to the ratification may be considered inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date, or that such situations as denial of access and control, use and enjoyment of property as well as any compensation for taking property may be regarded as continuing even when events have taken place before the ratification. Nevertheless, in respect to the case in question the Court rejected any continuing violation that could be imputable to the Poland.

Notwithstanding the Courts rulings in cases *Acimovic v. Croatia* and *Bletic v. Croatia* that application of the Convention to the facts and events that have taken place before the ratification would be incompatible with and violate general principles of international law and particularly the principle of non-retroactivity, there were also been accepted exceptions. In *Loizidou* and *Cyprus* cases the Court found violations arisen from the continuous denial of the individuals to access their property, though this events started before the date of ratification of Convention by the violating state. In *Almeida* and *Broniowski* it was held that unlike deprivation of property which is indisputably an instantaneous act, state's failure to provide compensation for expropriated property is of continuous character and the Court conceded the possibility of application of the Convention to such situations which commenced prior to the entrance into force of the Convention. In the *Preussische Treuhand* case rejected admissibility ratione temporis on the basis that there was not found continuing violation that could be imputed to Poland. However, the Court reiterated and once again confirmed that in certain circumstances where there can be established continuing violation or situation it is possible to examine facts taken place before the ratification of the Convention, moreover considering that events in *Broniowski* and *Preussische Treuhand GmbH & Co. KG a.A v. Poland* have taken place before 1950, such possibility exists even when facts occurred before the Convention was drafted. So, there is no reason why the Court cannot apply the provisions of ECHR to the Armenian case, where the events have taken place before the ratification or drafting of the Convention but which represent a continuous denial of providing compensation for unjustly expropriated properties.

§2. Ratione materiae

[70] *Preussische Treuhand GmbH & Co. KG a.A v. Poland*, app. no 47550/06 (ECtHR, 7 October 2008), para 5

The Court can only examine complaints concerning the rights guaranteed by the Convention and its protocols. It declares inadmissible any individual complaint which it will consider incompatible with the provisions of the Convention or its protocols.[71] Article 32 of the Convention stipulates that "the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47 and "in the event of dispute as to whether the Court has jurisdiction, the Court shall decide."[72]

One of the primary principles of the ECHR is that this Convention is regarded as a 'living instrument'. It means that the Court interprets provisions of the Convention considering current day conditions and circumstances, modifications and developments. So, the content and meaning of the rights and freedoms protected by the ECHR may undergo certain changes. Concerning the right to property, an applicant can allege a violation of article 1 of the protocol No. 1 only if there is interference with his right of peaceful enjoyment of possessions within the meaning of that article as well as interpretation or case law of the Court. As it is mentioned in the second chapter the notion "possessions" have an autonomous meaning which is not limited to the ownership of physical goods and may include rights which are not included in the category of property rights and possessions in the domestic law. As stated in the chapter 2 possessions can include rights arising from shares, debts, intellectual property etc. Most importantly the right to claim compensation is also covered by the article 1.

In the Armenian case the violation concerns the victims' right to claim compensation for expropriated possessions. This right was declared in the case *Pressos Compania Naviera S.A. and others v. Belgium* where the Court stipulated that "taking of the property without payment of an amount reasonably related to its value will constitute a disproportionate interference".[73] In Almeida and Broniowski the Court found that state's failure to pay compensation for deprived property is a violation of continuing character. Considering all the abovementioned the possible claims of victims in the Armenian case would satisfy the ratione materie requirement.

§3. Ratione Personae

In order to comply with this admissibility criterion it is necessary that the complaint is brought against a state within the jurisdiction of which the alleged violation of the Convention have been taken place, i.e. within the territory of such state or in a territory effectively controlled by that state. Additionally, it is relevant that the violation complained of be committed by a state party to the

[71] European Convention of Human Rights, art. 35 §3 (a)
[72] European Convention on Human Rights (1950), Council of Europe, art. 32
[73] *Pressos Compania Naviera S.A. and others v. Belgium,* 17849/91 (ECtHR, 20 November 1995)

Convention or to be attributable to such state. In *Bijelic v. Montenegro and Serbia* the Court stipulated, making reference to Human Rights Committee's General Comment, that the "fundamental rights protected by international treaties belong to the people living in the territory of the State party concerned… once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding the change in Government of the State party…".[74]

Applicant will be recognized incompatible with the requirement of ratione persone if:

1) he/she lacks standing according to art. 34 of ECHR, i.e. does not belong to the category of person, non-governmental organization or group of individuals;
2) the complaint is brought against an individual or an International organization;
3) the applicant is unable to show that he/she is a victim of the alleged violation of the Convention;
4) the complaint is brought against a state which has not ratified the Convention or protocols thereto, depending of what violation is the applicant complaining of.

Consequently, in our case the respondent state, i.e. Turkey, cannot claim that expropriations have been taken place during the previous regime or Government and it does not bear any responsibility for those actions, as 1) the failure to provide compensation is of continuing character and 2) obligation to rectify such failure and restore the right to property does not extinguish by the succession of governments.

Concerning the discussion of the issue whether the applicants' potential claim against Turkey will fall under the ratione personae jurisdiction of the Court will not be expedient, as it is dependent on the specifics of each separate case.

§4. Ratione Loci

According to this criterion the alleged violation of the Convention must take place in the territory of the State party or within territory effectively controlled by such State, in order to be admissible for the Court's examination.

As there is no doubt that the events in the question have occurred within territory of Turkey, which is a Contracting party, it is highly improbable that the Court would recognize any claim against such violations inadmissible on this ground.

Conclusion

[74] *Bijelic v. Montenegro and Serbia, app. no* 11890/05 (ECtHR, 28 April 2009), para. 58, 69

In the result of the investigation of the research question it was found out that there is indeed a right to property which in our case is expressed in the right to claim compensation for the deprived property, which was violated or interfered with. The latter is an inseparable part of right to property in accordance with the Court's interpretation of the notion of "possessions" as an autonomous concept. In this respect the victims of Turkish expropriations and their descendants can have a standing before the Court. In other words applications which may be brought before the Court would be compatible with the ratione materiae jurisdiction, as the right to compensation is covered by the Convention.

One of the major and justified concerns in the case of claiming compensation for the confiscated properties of Armenians, which has taken place during WWI, is whether the Convention which was drafted and ratified after those events can be applied retroactively to such facts. After exploring several similar cases concerning violation of the right to property and in particular the right to acquire compensation for deprived property it was established that the Court has adopted a specific approach toward such cases. Particularly, when there can be established continuing violation of the right protected by the Convention the Court accepts the possibility of considering facts that have happened before the ratification of Convention. In the several cases discussed in the Chapter 3 the Court has recognized the failure to provide compensation by the state for the violation of the right to property as having continuing character. Therefore, in respect to Armenian case there is a high probability that complaints, that could be brought before the Court, would be declared to be within the jurisdiction of the Court and thus admissible on abovementioned grounds, i.e. ratione materie and ratione temporis.

The overall success of the complaints will depend on the peculiarities of each case separately, e.g. whether the application is ill-founded, domestic remedies are exhausted, whether six month period has been observed and others. The main challenge of the applicants will be to justify the twenty year delay for lodging their complaints, as Turkey has ratified the Convention in 1990. Therefore there was an opportunity to apply to the Court with the respective issue much earlier. However, this question needs a separate and more thorough investigation.

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