



TOPICAL
DIALOGUES

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Content

One topic - four interviews

DAVID HUNANYAN (Armenia)

The Right to Property in Armenia -----5

FUAD AGHAYEV (Azerbaijan)

The Right to Property in Azerbaijan -----8

ARTAK KIRAKOSYAN (Armenia)

**In Recent Years, There Have Been No High-Profile Property Cases
in Armenia -----11**

SAMED RAHIMLI, (Azerbaijan)

The Right to Property Is Not Guaranteed in Azerbaijan -----14

One topic - Four Interviews

This is a series of interviews with Armenian and Azerbaijani specialists on issues that concern every single one of us: that is, the right to defense and access to courts, the right to property, the situation in healthcare and education sectors. Every expert shares the situation in his/her country.

The materials were prepared within the framework of the “Public Dialogues for Communication between Armenian and Azerbaijani Specialists” project, implemented by the “Region” Research Center.

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TOPIC - THE RIGHT TO PROPERTY IN ARMENIA AND AZERBAIJAN



DAVID HUNANYAN,
Partner in AM law firm, PhD in Law, Attorney

The Right to Property in Armenia

- Is the property right guaranteed to the citizens of Armenia in the legislation of Armenia? What norms of national and international law guarantee the right to property for Armenian citizens?

In Armenia, the right to property is guaranteed at the constitutional level. In particular, according to Part 1 of Article 10 of the Constitution of the Republic of Armenia: “1. All forms of ownership shall be recognized and equally protected in the Republic of Armenia.”

Considering the geographical features of Armenia, Part 2 of Article 10 of the Constitution of the Republic of Armenia highlights objects that cannot be privately owned: “2. Subsoil and water resources shall fall under the exclusive ownership of the state.”

Besides, Part 6 of Article 60 of the Constitution indicates the objects that cannot belong to foreign citizens: “6. Foreign citizens and stateless persons shall not enjoy the right of ownership over land, except for the cases prescribed by the law.”

Article 60 of the Constitution of RA provides for the basic legal norms regarding the right to property, which are developed in the legislative acts of Armenia. In particular, the content of the right of ownership is indicated: possession, use and disposal of the property. The right of inheritance is guaranteed. It also provides that the right to property may be limited only by law in order to protect the public interest or the fundamental rights and freedoms of others. As for deprivation of property rights, it is indicated that this is possible only in cases established by the law - in a court of law. It should be noted that such cases as deprivation of property rights are provided for in the Criminal Code of Armenia when the court imposes a punishment for a committed crime. Besides, the option of alienation of property rights in order to ensure prevalent public interest is not excluded. In particular, it is indicated that this is done in exceptional cases and in accordance with the procedure

established by the law: only with the provision of equivalent compensation in advance. Article 60 also provides for the legal protection of intellectual property.

It should be noted that an important role is also played by legal regulations at the legislative level. The laws and by-laws of Armenia comprehensively and fully regulate this sphere of social relations.

After the Velvet Revolution in April 2018 the matter of property seizures and confiscations by former corrupt officials is sometimes raised in the Armenian press and in the speeches of public figures. Given the constitutional provisions, confiscation of property is possible only by a court decision, if it is prescribed by the law. In other words, the legal way of confiscating property is in the form of an addition of a relevant article made to the Armenian Criminal Code that provides for punishment in the form of confiscation for specific crimes.

With regard to international law, Armenia has signed all fundamental international human rights treaties, which provide for and guarantee the right to property (European Convention for the Protection of Human Rights and Fundamental Freedoms, Universal Declaration of Human Rights, etc.).

- Who violates the rights of property rights of RA citizens and how frequently?

The right to property is absolute by its nature. This means that everyone, including the state, is obliged to respect the rights of the person who is the owner of the given property. This in turn means that disputes may arise between the owner and other legal entities: a state body, a local government body, a legal entity, and a natural person.

After the well-known events that took place in the 2000s, related to the construction of the Northern Avenue in Yerevan, there have been no other similar loud cases of violation of citizens' rights to property and real estate. Disputes also took place in the village of Teghut, which were associated with the discovery of minerals in the vicinity. In both cases, it was about the alienation of the right of ownership of land in order to ensure the prevalent public interest with prior and equal compensation. And complaints mainly related to the amount of compensation.

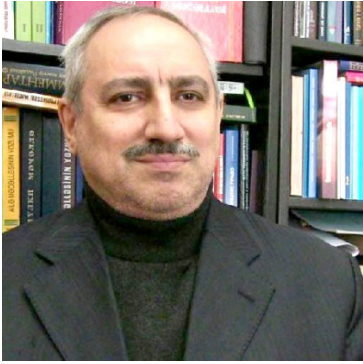
In general, disputes over the protection of property rights are present between individuals. In this case, all conflicts are resolved in court. In Armenia, the judicial system consists of three instances: the court of first instance, the Appeal Court and the Cassation Court. The Court of Cassation is the highest instance, and the decisions of this court are not subject to appeal. If a person is dissatisfied with the decision of the Court of Cassation, s/he is entitled to appeal to the European Court of Human Rights (ECHR) by filing a lawsuit against the Republic of Armenia. It should also be noted that the Court of Cassation adopted many decisions in the field of protection of property rights, which have the power of precedent for all courts of the country.

- Is there any statistics on the violations of citizens' rights to property?

No special statistics on the violations of property rights is kept by government agencies. An overall impression can be made by examining the official website of the judicial sector: www.datalex.am. In particular, on the website you can find court cases classified by the content of court decisions. More comprehensive information on the level of the development of the legal system for the protection of property rights can be obtained by examining the judicial precedents of the Court of Cassation of Armenia. The fact is that the Court of Cassation has the right to comment on the legal norms that are provided for in a particular regulatory act of the country. That is, the Court of Cassation does not create new legal norms (as is the case in Common Law countries, for example, in the USA), but explains the meaning of this norm, if there is a need for it. As a rule, such a need often arises, which is quite a normal phenomenon. It is also necessary to say that the Cassation Court has made quite a large number of decisions in this sphere.

- How effective is the judicial system in protecting the property rights of citizens?

It is quite complex question to ask about the effectiveness of a country's judicial system, and it is impossible to answer it unequivocally. But the number and content of the decisions of the European Court of Human Rights can serve as an indicator. To date, the ECHR has made approximately more than 20 decisions against Armenia, regarding violations of property rights. Of these, the overwhelming majority is associated with the aforementioned alienation of the right to property for public domain.



FUAD AGHAYEV,
Attorney, Member of the Bar Association

The Right to Property in Azerbaijan

- Is the property right guaranteed to the citizens of Azerbaijan in the legislation of Azerbaijan? What norms of national and international law guarantee the right to property for Azerbaijani citizens?

The right to property is guaranteed primarily by the Constitution of Azerbaijan, namely Articles 13 and 29. No one shall be arbitrarily deprived of the right to property. Termination of the right of ownership by the state for public needs can take place only with prior and fair payment of compensation for property owned by a citizen or a legal entity.

Naturally, the Civil Code, the Land Code, the Housing Code and other legislative acts in general sufficiently guarantee the right to property.

In addition to the norms of national law guaranteeing property rights, this right is guaranteed by Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Law of the Republic of Azerbaijan on the Protection of Historical and Cultural Monuments regulates relations linked with the protection, study and use of historical and cultural monuments. In lawsuits relating to violations of property rights, we refer to this law in case of demolitions of architectural buildings, which is a frequent happening in Baku. This law defines that legislative bodies, executive and judicial authorities, and local governments are obliged to protect historical and cultural monuments. Despite the fact that it is prohibited to change the artistic and aesthetic appearance of the monuments, destroy them, conduct maintenance, repair, and construction works, economic and other activities that may create a danger for monuments, local executive authorities often issue orders that violate the law.

The purpose of the state policy in the field of urban planning and construction activities is to ensure socio-economic development of territories and settlements, the protection of private interests, the prevention of harm to people's life, health, and property, environmental safety and environmental protection, as well as protection of historical and cultural monuments. There was no master plan during the construction boom in Baku. In the absence or expiry of such a plan, according to the law, construction projects could be

allowed only if the documentation on the envisaged project corresponded with the plans (the master plan and (or) the general plans) for the area of the undertaken project. However, this rule was violated by the executive authorities, too.

- Who violates the rights of the citizens of Azerbaijan to the property and how frequently?

The right to property is constantly violated by state bodies, administrative bodies, and the past 3 years since 2016, this has been done under the slogans of the so-called “innovation” in Baku. The judiciary violates the rights of citizens in the most brutal way, too. This applies particularly to the first instance and appeal courts.

The Supreme Court usually takes the side of the citizens in such affairs. However, before it lands with the Supreme Court, many have been already deprived of their property and become homeless.

In addition, there are massive demolitions of houses without the consent of the residents. In such cases, the residents and property owners who have not agreed to the conditions offered by the so-called developers, building cooperatives or other suspicious organizations appeal to local courts, and after exhausting domestic remedies, they file a complaint with the European Court of Human Rights. These complaints raise the issue of the violation of property rights, guaranteed by Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Recently, citizens have been offered to leave their apartments, upon a grant of a small amount for renting other housing for a year or two and a promise of providing an apartment in a new house to be built on the site of the old one. However, there are no guarantees. Citizens do not receive guarantees of whether the house will be built, when construction will be completed, when the house will be commissioned. The situation is so uncertain that citizens can be said to buy “a sight unseen”, running a very probable risk of becoming homeless.

- Is there any statistics on the violations of citizens' property rights?

As far as I know, there is no such statistics. It is not kept by state authorities. One local non-governmental organization kept statistics on the city of Baku. But this statistics is not published anywhere.

As I have already said, architectural monuments and buildings that are over 100 years old are often demolished in Azerbaijan. The saddest part is that this happens in the very center of the capital.

The statistics on the violations of property rights could be provided by the courts and the executive authorities, since citizens whose property rights are violated, first of all apply to either the body that ordered the demolition or the court to restore the violated rights.

Judging by the information in the local press, there are a lot of people dissatisfied with the illegal demolition of their homes. Some of them tried to hold protests.

- How effective is the judicial system in Azerbaijan in protecting the property rights of the citizens?

The judicial system in Azerbaijan is not effective in general, in the protection of property rights, in particular. The judicial system has been inactive in the protection of property rights, especially in the past 12 years.

In addition, it acts as an accomplice to those gross violations committed by the state and administrative authorities, as well as other organizations involved in the construction of new buildings, and parks, etc.

It is for this reason that citizens, after exhausting domestic remedies, apply to the European Court of Human Rights. However, a small number of decisions of the ECHR on the right of ownership are executed by the state.

So far, only two such decisions of the ECHR are known: "Akhverdiev against Azerbaijan" and "Khalikova against Azerbaijan". Azerbaijan implemented the decision of the ECHR in the case of Khalikova, that is, the compensation was paid. In the case of Akhverdiyev, the decision on compensation was made only on March 21, 2019, so it is still too early. The decision has not yet entered into force. It is known that the ECHR decisions are fully executed if the assigned compensation is paid and individual and general measures are taken. If the first part, that is, the payment of compensation, is executed, the general and individual measures are not applied at all in Azerbaijan. The state simply ignores them.

That is why such violations, even grosser ones happening in the country, continue to happen. If earlier, people were deprived of the right to their own property at the claim of the executive power, now they are deprived of it even under the claims of the housing cooperative or other private organizations. At least at the level of district and appellate courts, a lot of such decisions are passed.

The Supreme Court is more cautious about this category of cases. In most cases, justice can be achieved only at the ECHR. But for this you need to go through all three judicial instances within the country. But while the case is communicated to the ECHR and before decision is made by the ECHR, a lot of time may elapse and not all applicants will still be alive up to that point.



ARTAK KIRAKOSYAN,
Director of Civil Society Institute

In Recent Years, There Have Been No High-Profile Property Cases in Armenia

- What is the situation with the violations of property rights in Armenia like today and is there a difference compared with the past?

The situation in Armenia can be divided into three periods. This is the immediate post-Soviet period, when the first wave of property privatization, which was considered to be people's privatization, began in the republic. This privatization was carried out according to various, not entirely understandable schemes with the declared goal of accumulating initial capital. According to theory, the new capitalists were supposed to follow up by developing the country's economy on this basis. However, in practice, the state and the people received only a penny from the sale of their property. Later on, the new owners successfully resold the property they had laid hands on for pittance at prices that were dozens, hundreds, and even thousands of times higher. However, it was still significantly lower than the real cost of this property. Thus, in a certain sense, the first wave of privatization became the first national wave of problems with property. Subsequently, the second wave of privatization of state property continued, launching the process of filtering out "unworthy" owners, who received the property in due time for nothing, this time in favor of their "worthy" ones. All this was done by the authorities on the basis of gang "concepts" and "laws". This period lasted until the "velvet" revolution (*Editor*: April 2018), and it came to the point when there was no one to take property from, it was in the hands of their gangs – the "worthy" ones only. Moreover, among the "worthy" ones there were both members of the ruling Republican Party, and representatives of the opposition, who were also part of the system. In the same period, property was taken away from the ordinary mortals, in order to realize the "priority public interest". For example, they took property from the residents of the streets where North Avenue was erected in the center of Yerevan in the early 2000s.

The situation has become quite interesting in the course of the past year. There is an active and rather heated debate in the society and political circles about the need to introduce "transitional justice". Will this "transitional justice" affect the right to property acquired illegally by those in power who used their privilege? Besides this, there are

enough problems in connection with the obligations undertaken by the state under the previous authorities. Today it is not clear what can be done with these commitments. The most striking example is the situation around the Amulsar project by the British company Lidian Armenia. This mining company has acquired a license, has taken the first steps towards gold mining. However, today a part of the Armenian society has asked the question on who owns the country's mineral resources, and who decides how the mineral resources will be used. And the municipal councils in various regional communities require the mandatory consideration of the local population's opinion in the matter of subsoil use.

At the same time, I do not remember any case of the violation of the citizens' property rights at the level of private houses, apartments and small shops over the past year. Simply no large-scale construction is taking place in Armenia, respectively, and the rights of citizens in favor of "priority public interest" are not violated.

- Who deals with the protection of property rights of citizens more? Are these human rights organizations or lawyers, hired by the citizens?

I think lawyers hired by the citizens, deal with these matters more. Because, starting with Northern Avenue, the court cases by the plaintiffs who felt dissatisfied with the takeaway of their property in favor of "priority public interest" as well as the decisions of local courts, were most often filed with the European Court of Human Rights (ECHR). Lawyers, in turn, very quickly realized the viability and profitability of such cases, which, respectively, directly affected the number of lawsuits in the ECHR. Lawsuits in connection with the violation of property rights are investigated for years, but, as a rule, the ECHR satisfies these claims.

- Are there any high profile stories on the violations of property rights in Armenia, and was it possible to defend these rights through legal proceedings in the country?

The loudest stories of property rights violations are connected with the construction of the same Northern Avenue. And there were quite a few cases of the protection of citizens' rights to property and receipt of compensation through legal proceedings in this context. The fairness of the trials was a different question.

The fact is that some plaintiffs received quite large compensations upon court decisions, and some did not receive anything. At the same time, the claims of the plaintiffs were practically no different. It is clear that all this raises questions about the Armenian justice. In this sense, it is noteworthy that after being dissatisfied with the Armenian justice, the plaintiffs appealed to the ECHR, yet, they again received less compensation than that received by their fellow sufferers upon the decision of the Armenian courts. Thus, the whole process was rather murky, and it is possible that the judges made decisions for bribes. At the same time, in any case, all these compensations were paid by the state, that is, by taxpayers, and not by the developer companies.

- How does the situation with property rights in the country affect the development of entrepreneurship, foreign investment, and attitudes in the society, in general?

I would like to highlight two points here. Opposite points, by the way. On the one hand, there was hope in the country for the development of entrepreneurship under fair, uniform rules of the game for all. The non-division of entrepreneurs into "of their own" and "alien" will open the way for new investments in Armenia. And foreign and local entrepreneurs will be interested in capital investments in Armenia even by attracting credit funds. However, all this is seen only as a long term development.

In the short term, rather serious fears can be identified in connection with the situation with the right to property in Armenia. These fears are primarily caused by the prospect of a forced return of some material means and property to the state by people who received them through illicit enrichment. In the short term, this will put potential investors in a rather difficult situation. Investments in a country where there is a lack of stability in relations between the state and economic entities are fraught with serious risks. The lack of stability in its turn is also fraught with fears about the degree of predictability by the country's authorities. In the future, such authorities are quite capable of coming to the conclusion that it is necessary to establish, for example, socialism or communism in Armenia and, accordingly, go for the nationalization of all private property. Accordingly, in such an uncertain situation, it is rather difficult to talk about long-term investments. And here again we can give an example of Amulsar. It is clear that the investment climate in Armenia today is quite full of risk, and primarily for political reasons.

As for societal moods, on the one hand, people hope for the development and application of normal, fair, rules for business and entrepreneurship that will be equal for all. And also they hope for the prosecution of or at least return assets by illegally enriched persons. On the other hand, it is not yet clear to the society how all this should be implemented. So far, there is not even a roadmap for the introduction of a "transitional justice" system. It is not clear whether the return of assets, illegally acquired over the past decades, will take place. At the same time, in the future, I do not even rule out the possibility of a complete redistribution of property in Armenia, since the ruling elite needs funds for the development of the country. However, so far the high degree of public confidence in the government and the prime minister does not imply such a scenario. Thus, it can be stated that as a whole, the society is quite positive about the current situation around the property right in Armenia. Our main problem is uncertainty, which does not allow us to speak boldly about long-term investments in the economy of our country.



SAMED RAHIMLI,
Lawyer

The Right to Property Is Not Guaranteed in Azerbaijan

- What is the situation with violations of property rights like in Azerbaijan today and is there any difference compared with the past?

First of all, we have to define what is the right to property, since the right to property presents itself in two aspects: the first aspect is the constitutional right to property, which establishes that the state should not interfere with this right, the second is the right to property that exists in civil law which regulates the right to property between two individuals. Usually, when we talk about the right to property, we mean the constitutional right to property, in the context of which the state cannot interfere with this right without legal grounds, or establishes the cases when the state may interfere or restrict the right to property. In such cases, the state should pay a fair compensation, such intervention should be based on the needs of the state or the public.

Over years, we have seen a situation in which the state deprives citizens of property, takes away houses and apartments in Baku. Demolitions are periodically massive. Even whole neighborhoods are being demolished. This is justified by the fact that the demolition is carried out in order to improve the city or design parks. There are two problems in this regard: the first problem is that the goals set by the state, namely the improvement of the city, the creation of parks, are not a necessity to address the needs of the state or the public. If the state withdraws property from someone, it should be for the purposes of state needs and be absolutely necessary. For example, if a state seizes land for military needs that is important for the security of the state, this is legal and necessary. However, the arrangement of the city, the creation of parks do not constitute state needs. Unfortunately, the property of citizens is seized by the state on such frivolous grounds.

Compensation is another problem. The compensation offered to the citizens in return for their property is usually very low, it is not fair. The reason is that the state approaches this only from the technical perspective. The apartments built during the Soviet times are usually small-sized, in the range of 30-50 square meters. The compensation offered by the state for these apartments is not enough to buy a normal living space now. For this reason, many citizens who have been deprived of apartments in the center of Baku are forced to buy apartments far from the city center. This creates a rather unfair situation. In

some cases, citizens are given an apartment in the same area as the old one. However, this is not always the case.

The worst thing is that this process continues to this day. Thus, the state, under frivolous pretexts and by paying unjust compensation, deprives citizens of their right to property.

Now there is another tendency, too, to seize land plots, that is, the situation has gone beyond the limits of the capital. In most cases, the seized land plots are transferred to the ownership of legal entities.

The difference from the past is that the violation of the right to property is continually aggravating. Thus, it can be said that there is only nominal protection of and guarantees for property rights in Azerbaijan. This nominal protection suggests that there are no effective guarantees for property rights in Azerbaijan.

- Who is more involved in the protection of property rights of citizens – human rights organizations or lawyers hired by the citizens?

Usually, the citizens whose rights have been violated protect their own property rights. Some non-governmental organizations are involved in their protection, too. In 2014, after making the law on non-governmental organizations stricter, many such possibilities were abolished. The lack of state legal assistance had a negative impact on the protection of citizens' property rights. Previously, some citizens could invite proxies who, for a low pay, engaged in the protection of their rights in the courts. However, after limiting the institution of representation in 2017, citizens lost this opportunity as well. Currently, due to high attorney fees, citizens are increasingly left without protection. In addition, many lawyers specialize in criminal cases, they have little experience in property seizure cases for state needs. This also creates some problems. Many cases are sent to the European Court of Human Rights. Until 2017, these cases mostly engaged representatives.

Thus, due to the stricter law on non-governmental organizations in 2014 and the limitation of the institution of representation in 2017, the citizens themselves now engage in the protection of their own property rights.

- Are there any high-profile cases of violations of property rights in Azerbaijan and was it possible to defend these rights through legal proceedings in the country?

The legal remedies in the country cannot be considered sufficiently effective. Judicial practice shows that the courts do not want to deal with state administrative bodies, so most of the lawsuits are not satisfied.

The courts do not delve into the concept of "state" or "public" needs. They are basically guided by the amount offered to the property owner by the executive power. Therefore, local courts can not be effective. As for the European Court of Human Rights, this court considers cases for a long time, which also plays against the citizens deprived of their right to property.

Sufficiently high-profile cases of violations of property rights in Azerbaijan are mainly related to cases of demolition of houses in the center of Baku: in Fizuli (formerly Basin)

street and N.Narimanov Avenue (formerly Soviet). There were mass protests by the citizens during the demolition of the houses.

- How does the situation with property rights in the country impact on the development of entrepreneurship, foreign investment, and attitudes in the society, in general?

The situation with the right to property, of course, affects the development of the country. If the right to property is not guaranteed, the economy cannot develop. Speaking about the economy, we mean the main globally practiced forms of market economy, free enterprise, the system of free initiative. As I noted above, the protection of property rights is nominal in Azerbaijan: property rights are not guaranteed and the courts are not effective in protecting property rights.

The free enterprise system cannot operate where the right to property is nominal, and the protection of this right is practically ineffective. Such a country cannot be attractive for foreign investment, it can have no room for economic, political, and social development. The foundation of free enterprise is the desire of individuals to maintain ownership over procured/obtained property. When protection of property rights is nominal, and state bodies or non-state structures can deprive citizens of their property rights, no one is interested in engaging in free enterprise, as entrepreneurs know that they cannot keep the accumulated capital to themselves. In this situation, foreign investors will also not be interested in making investments. Why should they invest their money in another country, and then lose this money? In general, if there is no protection of property rights, citizens cannot develop economically, politically and socially. If there is no protection of private property, citizens cannot save the financial means accumulated, hence, they earn little and spend a lot, which affects their social development.

All of the above suggests that the right to property must be protected and guaranteed.