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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ARMENIA

OPINION

ON

**THE DRAFT AMENDMENTS AND SUPPLEMENTS
TO THE LEGISLATION ON EXPROPRIATION OF PROPERTY
FOR OVERRIDING PUBLIC INTERESTS**

**Adopted by the Venice Commission
at its 142nd Plenary Session
(Venice, 14-15 March 2025)**

On the basis of comments by

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I. Introduction

1. By letter of 22 January 2025, Ms Srбуhi Galyan, Minister of Justice of the Republic of Armenia requested an opinion of the Venice Commission on the draft law of the Republic of Armenia “On making supplements and amendments to the law of the Republic of Armenia on expropriation of property for ensuring overriding public interest” (hereinafter “the amended law”) along with supplementary legislation ([CDL-REF\(2025\)014](#)).

2. Mr Knežević, Mr Velaers, Mr Pinelli and Mr Voyatzis acted as rapporteurs for this opinion.

3. On 24 and 25 February 2025, a delegation of the Commission composed of Mr Knežević, Mr Velaers, Mr Pinelli and Mr Voyatzis accompanied by Mr Vahe Demirtshyan from the Secretariat held online meetings with members of Parliament, representatives of the Ministry of Justice, the Ministry of Territorial Administration and Infrastructure, the Yerevan Mayor’s Office, the Urban Development Committee, as well as with representatives of civil society and international organisations. The Commission is grateful to the authorities and the Council of Europe office in Yerevan for the excellent organisation of the online meetings.

4. This opinion was prepared in reliance on the English translation of the draft amended laws. The translation may not accurately reflect the original version on all points.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 24 and 25 February 2025. Following an exchange of views with the Minister of Justice of Armenia, it was adopted by the Venice Commission at its 142nd Plenary Session (Venice, 15 March 2025).

II. Background

A. Expropriations in Yerevan and the current legal framework

6. In the early 2000s, the Government of the Republic of Armenia embarked on a series of expropriations in the central districts of Yerevan to facilitate large-scale urban development projects deemed to serve an overriding public interest. These measures gave rise to concerns among some observers regarding the clarity and predictability of the applicable legal framework, in particular with respect to the procedural safeguards and compensation mechanisms provided to affected property owners.¹

7. While Article 31 of the previous version of the Constitution of the Republic of Armenia required a law to regulate expropriations, no such law had been adopted by the National Assembly until 2006. During this interim period, the expropriation process—including the procedure for determining the amount of compensation—was governed exclusively by a series of Government decrees.² This reliance on secondary legislation raised questions among the civil society about the consistency of expropriation practices with constitutional principles and international standards concerning the protection of property rights, these concerns also were highlighted in the judgments of the European Court of Human Rights (ECtHR).³

8. On 27 November 2006 the law on “Expropriation of property for ensuring overriding public interest” was adopted. According to Article 3 (1) of this law, the constitutional basis for the alienation of property for the needs of society and the State is the overriding public interest. Pursuant to Article 3 (2) of the law, the constitutional requirements for such alienation of property

¹ See “Legislative issues related to the expropriation of property for the purpose of overriding public interest: Policy analysis”, Varduhi Avanseyan, developed by the “Transparency International Anti-Corruption Center” pages 3-5.

² ECtHR, Minasyan and Semerjyan v. Armenia, 27651/05, 26, June 2009, para 72.

³ Ibid, paras 66-68.

include the obligation to conduct the process in accordance with a procedure prescribed by law, and to ensure that adequate compensation is provided in advance for any property subject to alienation.

9. In line with Article 4 (1) of the law, the determination of the public interest for the alienation of property is guided by several principles: the public interest must prevail over the owner's interests; the effective implementation of the public interest cannot be achieved without alienation of the specific property; the alienation should not cause unjustified harm to the owner; the public interest is recognised by a governmental decree; and any question concerning the existence of a public interest may be subjected to judicial review. Article 4 (2) of the law further provides that the overriding public interest may encompass, inter alia, the implementation of significant State or community importance; however, the mere goal of securing additional revenue for the State or community budget does not in itself constitute an overriding public interest.

10. Under Article 11 (1) of the law, the owner of property subject to alienation must receive adequate compensation, which is deemed to be the market value of the property plus an additional fifteen percent. Finally, Article 11 (3) of the law stipulates that the market value of real estate, as well as any property rights attached thereto, must be determined according to the procedure set out in the Law on Real Estate Evaluation Activity.

11. According to Article 60 of the current version of the Constitution of Armenia,

- (1) Everyone shall have the right to possess, use and dispose of legally acquired property at his or her discretion.
- (2) The right to inherit shall be guaranteed.
- (3) The right of ownership may be restricted only by law, for the purpose of protecting public interests or the basic rights and freedoms of others.
- (4) No one may be deprived of ownership except through judicial procedure, in the cases prescribed by law.
- (5) Alienation of property with a view to ensuring overriding public interests shall be carried out in exceptional cases and under the procedure prescribed by law, only with prior and equivalent compensation.

B. Overview of the proposed amendments

12. The legislative package includes amendments to six legal acts in particular:

- Law on Making Supplements and Amendments to the Law "On Expropriation of Property for Ensuring Overriding Public Interests",
- Law on Making Supplements to the Civil Procedure Code,
- Law on Making Supplements to the Administrative Procedure Code,
- Law on Making a Supplement to the Administrative Offences Code,
- Law on Making a Supplement to the Law "On Evaluation Activities",
- Law on Making a Supplement to the Law "On state registration of rights over property".

13. According to the explanatory note, in addressing the identified challenges, the draft amendments propose a series of significant modifications aimed at enhancing legal certainty, safeguarding the rights of property owners, and ensuring the timely execution of projects serving the public interest.

14. As outlined in the Explanatory Note, the expropriation process under the Law on Expropriation of Property for Ensuring Overriding Public Interests consists of nine distinct stages:

1. Adoption of a Government decision recognising the existence of an overriding public interest,
2. Preliminary examination of the property (optional stage),

3. Preparation of a detailed description of the property subject to expropriation.
4. Evaluation of the property to be expropriated,
5. Submission of the draft expropriation contract to the owner and other parties holding property rights,
6. Negotiation and conclusion of the contract,
7. Deposit of equivalent compensation with a notary or the court in cases where no agreement is reached through negotiations,
8. Filing of a court claim by the acquirer to determine the amount of equivalent compensation,
9. Registration of the acquirer's ownership rights based on the court's decision establishing the compensation amount.

15. The draft amendments foresee that the methodology for determining and justifying overriding public interests shall be approved by the Government decree. In this regard, governmental decisions concerning the public interest must specify clear timelines for the implementation of projects.

16. A distinct procedural framework is foreseen for handling disputes related to compensation and governmental decisions, to be incorporated within the Civil Procedure Code and the Administrative Procedure Code. The scope of litigation concerning compensation will be strictly defined, with the aim of preventing undue delays.

17. The amendments introduce financial incentives to encourage voluntary agreements between property owners and the authorities. In this regard, property owners who accept compensation voluntarily will receive an amount up to fifteen percent above the existing legal requirement, effectively resulting in compensation that is thirty percent above market value. This measure aims to facilitate timely settlements and to reduce reliance on judicial intervention in compensation disputes.

18. Since according to the explanatory note, the proposed regulations have an improving nature in several aspects—particularly regarding the improvement of property valuation criteria and methodology, the presence of incentive mechanisms, and the possibility of providing higher compensation—it is proposed to give retroactive effect to the relevant regulations in the Draft Law.

C. International standards enshrined in the case law of the ECtHR and opinions of the Venice Commission

1. Case law of the European Court of Human Rights

19. According to the ECtHR case-law,⁴ to be deemed compatible with Article 1 of Protocol No. 1, the interference must fulfil certain criteria: it must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised.⁵ If the applicant's ownership has been extinguished under the provisions of domestic law, the ECtHR will examine the case under the second sentence of the first paragraph, i.e. as deprivation of "possessions". Deprivation of "possessions" covers a range of situations, regardless of how they are qualified under domestic law, where the very substance of an individual right has been extinguished.⁶ If the ECtHR regards a measure or a set of measures as an expropriation, this normally entails an obligation for the State to award compensation to the affected owner.

⁴ The [ECHR Knowledge Sharing platform \(ECHR-KS\)](#), Case-law Guide on Article 1, Protocol 1 to the ECHR.

⁵ ECtHR, *Beyeler v. Italy* [GC], paras 108-114.

⁶ ECtHR, *Holy Monasteries v. Greece*, paras 60-61.

20. As regards the principle of lawfulness, the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide freedom from or guarantees against arbitrariness.⁷ The principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application.⁸ With regard to the principle of foreseeability, the relevant law must be formulated with sufficient precision to enable citizens to regulate their conduct by foreseeing, to a degree that is reasonable under the circumstances, the consequences which a given action may entail. Such consequences need not be foreseeable with absolute certainty since excessive rigidity is undesirable.⁹

21. As to the “public interest”, the ECtHR will respect the legislature’s judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation.¹⁰ As in other fields to which the safeguards of the ECHR extend, the national authorities accordingly enjoy a wide margin of appreciation. For example, the margin of appreciation available to the legislature in implementing social and economic policies will be a wide one and the ECtHR will respect the legislature’s judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation. Furthermore, the notion of “public interest” is necessarily extensive.¹¹

22. As far as the proportionality of the impugned measure is concerned, an interference with the right to the peaceful enjoyment of “possessions”, apart from being prescribed by law and in the public interest, must strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights.¹² Generally, where a public-interest issue is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner.¹³ It has been admitted by the ECtHR that the persons affected by a measure interfering with their “possessions” must be afforded a reasonable opportunity to put their case to the responsible authorities for the purpose of effectively challenging those measures, pleading, as the case might be, illegality or arbitrary and unreasonable conduct.¹⁴

23. Finally concerning the issue of the compensation for the interference with property as an element of fair balance, the ECtHR’s power of review is limited to ascertaining whether the choice of compensation terms falls outside the State’s wide margin of appreciation in this domain.¹⁵ The Court will respect the legislature’s judgment as to the compensation due for expropriation unless it is manifestly without a reasonable foundation.¹⁶ The balance between the general interest of the community and the requirements of the protection of individual fundamental rights mentioned above is generally achieved where the compensation paid to the person whose property has been taken is reasonably related to its “market” value, as determined at the time of the expropriation.¹⁷ Losing the main source of income because of expropriation may mean that the applicant had borne an excessive individual burden if the

⁷ ECtHR, *East West Alliance Limited v. Ukraine*, para 167; *Ünsper Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, para 37; *Vistiņš and Perepjolkins v. Latvia* [GC], para 96.

⁸ ECtHR, *Lekić v. Slovenia*, para 95.

⁹ ECtHR, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], para 141.

¹⁰ ECtHR, *Béláné Nagy v. Hungary* [GC], para 113.

¹¹ ECtHR, *Vistiņš and Perepjolkins v. Latvia* [GC], para 106; *R.Sz. v. Hungary*, para 44; *Grudić v. Serbia*, para 75.

¹² ECtHR, *Beyeler v. Italy* [GC], para 107; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], para 108.

¹³ ECtHR, *Fener Rum Erkek Lisesi Vakfı v. Turkey*, para 46; *Novoseletskiy v. Ukraine*, para 102.

¹⁴ ECtHR, *G.I.E.M. S.R.L. and Others v. Italy (merits)* [GC], para 302; *Yildirim v. Italy (dec.)*; *AGOSI v. the United Kingdom*, paras 55 and 58-60; *Air Canada v. the United Kingdom*, para 46.

¹⁵ ECtHR, *James and Others v. the United Kingdom*, para 54.

¹⁶ ECtHR, *Lithgow and Others v. the United Kingdom*, para 122.

¹⁷ ECtHR, *Pincová and Pinc v. Czech Republic*, para 53; *Gashi v. Croatia*, para 41; *Vistiņš and Perepjolkins v. Latvia* [GC], para 111; *Guiso-Gallisay v. Italy (just satisfaction)* [GC], para 103; *Moreno Díaz Peña and Others v. Portugal*, para 76.

authorities did not address the issue of whether the compensation granted would have covered the actual loss involved in deprivation of means of subsistence or at least would have been sufficient to acquire equivalent land within the area in which the applicant lived.¹⁸

2. Judgments of the European Court of Human Rights in respect of Armenia (violation of Article 1 Protocol 1 to the ECHR)

24. There are more than twenty judgments delivered by ECtHR against Armenia concerning violations of Article 1 of Protocol No. 1 to the ECHR. Regarding the execution of ECtHR judgments, the supervision of the largest group of cases—*Minasyan and Semerjyan v. Armenia*¹⁹—was closed by the Committee of Ministers in 2015. This group concerned unlawful deprivation of property rights under conditions that were not prescribed by law but rather established through government decrees. The cases also involved the unforeseeable and arbitrary termination of the right to use accommodation, with domestic courts relying on inapplicable legal provisions.

25. Following the closure of the *Minasyan and Semerjyan group* of cases, the ECtHR has issued new judgments concerning the expropriation of applicants' property in Armenia. These cases highlight serious deficiencies in procedural safeguards against arbitrariness, particularly in instances where applicants were not involved in judicial proceedings related to the expropriation of their property,²⁰ additionally, the Court has identified disproportionate interference in cases where land was expropriated for mining purposes without due consideration of whether the compensation provided was sufficient to cover the applicants' loss of means of subsistence or to enable them to acquire equivalent land.²¹ The judgments further point to obstacles in accessing justice, deficiencies in the effective functioning of judicial mechanisms, violations of property rights, and infringements of the principle of legal certainty.²²

3. Documents of the Venice Commission

26. The Venice Commission has previously examined legislative frameworks in the field of property rights, notably in the context of Albania's efforts to address compensation and restitution of property expropriated during the Communist era. Although the historical circumstances in Albania differ from those in Armenia—where the concern relates to the expropriation of private property for reasons of overriding public interest—the core principles and international standards examined by the Venice Commission retain their relevance.

27. In particular the Venice Commission had previously issued following documents concerning the property related issues:

- Opinion on the Draft Law of Albania on Recognition, Restitution and Compensation of Property,²³ adopted in 2004;
- Amicus curiae opinion on the law on legalisation, urban planning and integration of unauthorised buildings of the Republic of Albania,²⁴ adopted in 2007;

¹⁸ ECtHR, *Osmanyan and Amiraghyan v. Armenia*, para 70.

¹⁹ ECtHR, *Minasyan and Semerjyan v. Armenia*, 27651/05, 26 June 2009, para 72.

²⁰ ECtHR, *Ghukasyan and Others v. Armenia*, 32986/10, 29 March 2022.

²¹ ECtHR, *Osmanyan and Amiraghyan v. Armenia*, 71306/11, 11 January 2019.

²² ECtHR, *Vardanyan and Nanushyan v. Armenia*, 8001/07, 6 March 2017.

²³ Venice Commission, [CDL-AD\(2004\)009](#), Opinion on the Draft Law of Albania on Recognition, Restitution and Compensation of Property of the Republic of Albania.

²⁴ Venice Commission, [CDL-AD\(2007\)029](#), Amicus curiae opinion on the law on legalisation, urban planning and integration of unauthorised buildings of the Republic of Albania.

- Amicus curiae brief on the conformity of Law no. 133/2015 “On the Treatment of Property and Finalisation of the Process of Compensation of Property” with the requirements of Article 1 of Protocol No. 1 to the ECHR and related case-law,²⁵ adopted in 2016;
- Opinion on the Draft Law on the Finalisation of Transitional Ownership Processes,²⁶ adopted in 2019.

28. These documents primarily addressed the standards established by the ECtHR, with a particular focus on the obligations arising from Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR). The principles emphasised in these opinions—particularly those related to the protection of property rights, proportionality of interference, legal certainty, and the rule of law—are relevant to the assessment of the proposed amendments.

D. Scope of the opinion

29. This opinion primarily focuses on the proposed amendments, assessing their compatibility with international standards related to the rule of law and the protection of human rights. In this context, the opinion will evaluate the extent to which these amendments conform to fundamental principles enshrined in international instruments and best practices. Particular attention will be given to the principles of legality, public interest, proportionality—including the “fair balance” test—the principle of fair compensation, and the right to an effective legal remedy. Where necessary and relevant, the opinion may also extend its analysis to existing provisions to ensure a comprehensive assessment of the legal framework as a whole.

30. The Venice Commission underlines that the fact that this Opinion does not explicitly address other aspects of the Draft Law should not be interpreted as an endorsement by the Venice Commission or as indicating that these aspects will not be raised in the future.

III. Analysis

A. The principle of legal certainty

31. The amended law stipulates the deadline for achieving the objective of expropriation (Article 7(2)(f) and Article 16(4)); moreover, the preparation of the property description record specifically requires the participation of two witnesses when the property owner hinders this process (Article 7(6)). The amended law also provides the specific timeframe within which the draft expropriation contract must be sent to property owners (Article 10(1)) and the precise period within which they must respond (Article 10(3)). Article 7(2)(g) of the amended law also stipulates that, in addition to other elements, the Government’s decision “On Recognising an Overriding Public Interest” shall also include “other required data”.

32. According to ECtHR, an essential requirement of Article 1 of Protocol No. 1 to the ECHR is that any interference by a public authority with the peaceful enjoyment of possessions must be lawful. The second sentence of the first paragraph permits deprivation of possessions only “subject to the conditions provided for by law,” while the second paragraph affirms the right of States to regulate the use of property through the enforcement of “laws.”²⁷

²⁵ Venice Commission, [CDL-AD \(2016\)023](#), Amicus curiae brief on the conformity of Law no. 133/2015 “On the Treatment of Property and Finalisation of the Process of Compensation of Property” with the requirements of Article 1 of Protocol No. 1 to the ECHR and related case-law.

²⁶ Venice Commission, [CDL-AD\(2019\)023](#), Opinion on the draft law on the finalisation of transitional ownership processes in the Republic of Albania.

²⁷ ECtHR, *Amuur v. France*, 25 June 1996, para 50; *The Former King of Greece and others v. Greece*, 25 October 2000, para 79; *Malama v. Greece*, 1 March 2001, para 43; *Hutten-Czapska v. Poland*, 22 February 2005, para 146; *Jahn and others v. Germany (GC)*, 30 June 2005, para 81; *Osmanyany and Amiraghyany v. Armenia*, 11 October 2018, para 51.

33. The rule of law—one of the fundamental principles underpinning a democratic society—is intrinsically embedded in all provisions of the Convention. The principle of lawfulness requires that domestic legal provisions governing property rights be sufficiently accessible, precise, and foreseeable in their application.²⁸ Moreover, any legal basis for deprivation of possessions must conform to the internal legal order of the Contracting State, including its constitutional provisions, thereby ensuring legal certainty and compliance with the overarching principles of the Convention.²⁹

34. The Venice Commission underscores that foreseeability entails not only enacting legislation in advance of its application and ensuring predictability with respect to its effects, but also drafting legal provisions with sufficient clarity and precision so that individuals can regulate their conduct accordingly.³⁰ The Commission in general, finds that the amendments in question seek to enhance the accessibility, precision, and predictability of the procedural framework.

35. However, the Venice Commission underscores the necessity of greater precision in defining the concept of “hindrance” by the owner on Article 7 (6) of the amended law. If ordinary procedural actions, such as filing legitimate legal claims, are construed as “hindrance,” the provision could discourage property owners from exercising their procedural rights, potentially conflicting with ECtHR standards on fair and effective remedies. Moreover, the concept of “hindrance” must not disproportionately limit the property owner’s ability to challenge the amount of compensation in all cases. Instead, an individualised and balanced approach is needed to safeguard procedural fairness and ensure that owners retain a meaningful opportunity to contest the adequacy of compensation in each case.

36. Conversely, if the term “hindrance” is understood to refer to situations where the owner of an apartment or a plot of land refuses to grant access to the administration’s experts for the purpose of property evaluation, as discussed during the online meetings, such a refusal could, in principle, constitute a legitimate ground for initiating the expropriation procedure. However, in the absence of a clear legal definition of “hindrance,” this provision may allow for an overly broad interpretation, potentially jeopardising the procedural safeguards afforded to property owners.

37. Furthermore, in Article 7 (2) (g) of the amended law, the phrase “other required data” to be demanded by the Government’s decision “On Recognising an Overriding Public Interest” lacks sufficient specificity. The readiness of the Armenian authorities, as reflected in their written comments on the draft opinion, to amend Article 7(2)(g) by allowing the Government to establish “other provisions arising from the laws”, is acceptable, as it clarifies that the Government may only specify provisions already set out in existing legislation.

38. The Venice Commission therefore recommends stipulating a clearer definition of “hindrance” by the owner in the amended law to prevent any restrictive interpretation that could undermine procedural rights. Additionally, the Commission recommends further specifying the provision concerning “other required data” to ensure legal clarity.

B. The principle of legality

39. According to Article 7 (1) of the amended law, the property is expropriated for ensuring the overriding public interests only in case the Government recognises the goal of expropriation as

²⁸See, *mutatis mutandis*, ECtHR, *Broniowski v. Poland*, (GC) 22 June 2004, para 147; *Malone v. U.K.*, 2 August 1984, paras 66-68; *James and others v. U.K.*, 21 February 1986, para 67; *Lithgow and others v. U.K.*, 8 July 1986, para 110; *Hentrich v. France*, 22 September 1994, para 42; *Saliba v. Malta*, 8 November 2005, para 37; *Edwards v. Malta*, 24 October 2006, para 60; *Osmanyan and Amiraghyan v. Armenian*, 11 October 2018, paras 52 and 53.

²⁹ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist para 44; ECtHR, *The Former King of Greece and others v. Greece*, 25 October 2000, para 82.

³⁰ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, para 58.

an overriding public interest. The Government may define a methodology for recognising the goal of expropriation as an overriding public interest and render decisions on recognising overriding public interest.

40. According to Article 4 (1) of the current law, the principles for determining the overriding public interest are as follows:

- (a) public interests should override the interests of the owner of the expropriated property;
- (b) the effective realisation of the overriding public interest may not be ensured without the expropriation of this property;
- (c) proceeding from the overriding public interest the property expropriation should not cause unreasonable damage to the owner;
- (d) public interest is recognised as overriding by the Government decision;
- (e) the fact of existence of overriding public interest may be contested through judicial procedure.

41. According to Article 60 (5) of the Armenian Constitution, alienation of property with a view to ensuring overriding public interests shall be carried out in exceptional cases and under the procedure prescribed by law, only with prior and equivalent compensation.

42. The amended law (Articles 7(1) and 4(1)(d)) confers upon the Government both the authority to define the methodology for determining when an expropriation serves an overriding public interest and the power to adopt decisions formally recognising such an interest. The Commission has previously raised doubts about entrusting critical expropriation criteria to the Government.³¹ Furthermore, as the Commission has not examined the proposed methodology, it is unable to determine whether it includes regulations of such significance that they should be enshrined in parliamentary legislation. Moreover, it remains uncertain whether this methodology has been developed or is yet to be formulated.

43. The Venice Commission further observes that the term “methodology” is rather vague and imprecise in this context, raising concerns that it might contain substantive regulations to be governed by legislative acts. While a methodology is indeed necessary to identify the “overriding public interests” that may justify expropriation, the Commission considers that its formulation should fall under the competence of Parliament, rather than the Government. This view is supported by Article 60 (5) of the Constitution of Armenia and Article 1 of Protocol No. 1 to ECHR, which together demand a clear legal basis for any interference by a public authority with the peaceful enjoyment of possessions—a principle also reflected in the ECtHR’s judgment in *Tunyan and Others v. Armenia*.³²

44. The Venice Commission acknowledges that it is ultimately for the Constitutional Court of Armenia to determine whether the delegations envisaged in the draft amendments comply with Article 60 of the Constitution.

45. The Commission further finds that the main elements of the methodology for determining the existence of an overriding public interest should be explicitly enshrined in the law while leaving the adoption of more technical aspects to the Government. Such an approach would ensure a uniform application of the criteria for determining an “overriding public interest” while preserving the necessary degree of executive flexibility.

46. Moreover, Article 7 of the amended law stipulates that the Government “may” define the methodology for determining an overriding public interest, thereby granting it discretionary power

³¹ Venice Commission, [CDL-AD\(2019\)023](#), Opinion on the draft law on the finalisation of transitional ownership processes in the Republic of Albania, para 59.

³² ECtHR, *Tunyan and Others v. Armenia*, 9 October 2012, para 47; *Lithgow and Others v. the United Kingdom*, 8 July 1986, para 110, Series A no. 102.

to refrain from adopting such a methodology altogether. As mentioned above, this competence shall be entrusted to Parliament, and especially, it should not be left to the discretion of the executive whether to establish such a methodology. During the online meetings the authorities agreed to consider this approach.

47. In their comments to the draft Opinion, the Armenian authorities assert that the term “methodology” in Article 7(1) pertains solely to the methodology for “justifying and reasoning the decision on recognising expropriation as overriding public interest”, and not – as suggested by Article 7(1) – to the methodology “for making the decision on recognising expropriation as overriding public interest”. If this interpretation is correct, Article 7(1) should be amended accordingly. However, even in that case, the principle of legality requires that it is the responsibility of the legislator to establish the key elements for justifying Government decisions.

C. “The public interest”

48. Article 2 of the law on “Expropriation of property for ensuring overriding public interest” provides the goals pursued by the overriding public interest, which are:

- (a) ensuring the protection of state, safety of state and society;
- (b) ensuring the fulfilment of obligations provided for by international treaties of the Republic of Armenia;
- (c) ensuring the creation or protection of historical and cultural values or monuments of international and national significance, as well as specially protected natural territories;
- (d) ensuring environmental protection;
- (e) ensuring the development of education, health, sports, as well as science or culture;
- (f) ensuring the implementation of the programmes of republican, communal or inter-communal significance in the fields of energy, telecommunication, water supply, water disposal, heat supply, urban development, subsoil exploration, subsoil use, transport, communication channels or development of infrastructures of settlements;
- (g) protection of the life, health or ownership of persons;
- (h) prevention of emergency situations, mitigation of possible consequences of emergency situations, elimination of consequences of emergency situations.

49. A measure depriving an individual of property must, in both principle and practice, pursue a legitimate aim “in the public interest”.³³ The notion of “public interest” is necessarily broad.³⁴ According to the case law of the ECtHR, the taking of property in furtherance of legitimate social, economic, or other policies may constitute a public interest even if the wider community does not directly use or enjoy the property acquired.³⁵

50. In defining “public interest,” the ECtHR grants a wide margin of appreciation to national authorities, given their direct knowledge of societal needs. Under the Convention’s system of protection, it is the national authorities who make the initial assessment as to whether a public concern warrants measures affecting property rights, including deprivation or restitution of property.³⁶ Consequently, the ECtHR respects the legislature’s judgment on what is “in the public interest,” unless that judgment is manifestly without reasonable foundation.³⁷

³³ ECtHR, *Lithgow and others v. U.K.*, 8 July 1986, para 120; The principle of a “fair balance” inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. *Hutten-Czapska v. Poland*, 22 February 2005, para 146.

³⁴ See e.g. ECHR *Edwards v. Malta*, 24 October 2006.

³⁵ ECtHR, *James and others v. UK*, 21 February 1986, paras 40-42, 45.

³⁶ ECtHR, *Maria Atanasiu and others v. Romania*, para 166.

³⁷ ECtHR, *James and others v. U.K.*, 21 February 1986, para 46; *The Former King of Greece and others v. Greece*, 25 October 2000, para 87; *Malama v. Greece*, 1 March 2001, para 46; *Zvolský and Zvolská v. the Czech Republic*, 12 November 2002, para 67 in fine; *Edwards v. Malta*, 24 October 2006, para 64.; *Osmanyany and Amiraghyany v. Armenian*, 11 October 2018, para 60.

51. The Venice Commission welcomes the comprehensive list of public-interest objectives introduced by the law. It emphasises that these objectives may potentially enhance legal clarity and facilitate the determination of an overriding public interest.

D. The principle of proportionality and fair compensation

52. The Venice Commission underlines that not only must an interference with the right of property pursue, in principle as well as on the facts, a “legitimate aim” in the “general interest”, there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions.³⁸ The ECtHR considers that a measure must be both appropriate for achieving its aim and not disproportionate thereto. That requirement is expressed by the notion of a “fair balance” that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 to ECHR as a whole. In each case involving an alleged violation of that article the ECtHR must therefore ascertain whether by reason of the State's interference the person concerned had to bear a disproportionate and excessive burden.³⁹

53. The Venice Commission underlines that the balance between the general interest of the community and the requirements of the protection of individual fundamental right is generally achieved where the compensation paid to the person whose property has been taken is reasonably related to its “market” value, as determined at the time of the expropriation.⁴⁰ Moreover, losing the main source of income because of expropriation may mean that the applicant had borne an excessive individual burden if the authorities did not address the issue of whether the compensation granted would have covered the actual loss involved in deprivation of means of subsistence or at least would have been sufficient to acquire equivalent land within the area in which the applicant lived.⁴¹ Moreover, if expropriation deprives an owner of their main livelihood, the law should guarantee that compensation fully addresses the resultant economic loss. Failing to do so risks imposing a disproportionate burden.

54. The Venice Commission observes that Article 4(1) of the amended law sets out the principles governing expropriation (see the chapters above). The Commission finds that the principles—namely, that the public interest should prevail over the interests of the owner of the expropriated property, that expropriation should only be permitted when the effective realisation of the overriding public interest cannot be ensured by other means, and that it should not impose an unreasonable burden on the owner—are consistent with the substance of the case law of the ECtHR.

55. According to Article 10 (1.1) of the amended law, where the owner of the property subject to expropriation does not hinder the drawing up of the record on description of property being expropriated and concludes the contract prescribed by part 4 of Article 10 of this Law⁴² with the

³⁸ ECtHR *Osmanyan and Amiraghyan v. Armenian*, 11 October 2018, para 52.

³⁹ ECtHR, *Sporrong and Lönnroth*, 23 September 1982, para 69 and 73; *James and others v. U.K.*, 21 February 1986, para 50; *Lithgow and others v. U.K.*, 8 July 1986, para 120; *Mellacher and others v. Austria*, 19 December 1989, para 48; *The Holy Monasteries v. Greece*, December 1994, para 70; *Spadea and Scalabrino v. Italy*, 28 September 1995, para 33; *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, para 38.

⁴⁰ ECtHR, *Pincová and Pinc v. Czech Republic*, para 53, *Gashi v. Croatia*, para 41; *Vistiņš and Perepjolkins v. Latvia [GC]*, para 111; *Guiso-Gallisay v. Italy (just satisfaction) [GC]*, para 103; *Moreno Díaz Peña and Others v. Portugal*, para 76.

⁴¹ ECtHR, *Osmanyan and Amiraghyan v. Armenia*, para 70.

⁴² The Article 10 (4) of the amended draft law stipulates that the property may be expropriated pursuant to the contract concluded between the acquirer and the owner of property subject to expropriation. In this case, the size of the equivalent compensation being provided for the property being expropriated, which may not be less than the size prescribed by part 1 of Article 11 of this Law, whereas in the existence of the grounds prescribed by part 1.1 of the same Article — less than the size prescribed by part 1.1, as well as the, form, procedure, terms, conditions

acquirer, the equivalent compensation paid to the owner shall be deemed to be the amount thirty percent higher than the market price of the property being expropriated.

56. Article 10 (3) of the amended law, provides that the owner of the expropriated property or persons holding property rights towards the property being expropriated shall have the right to, within a period of two weeks, submit written and reasoned objections or proposals with regard to draft expropriation contract.

57. The Venice Commission considers that the two-week timeframe for submitting written, reasoned objections or proposals regarding the draft expropriation contract is unduly short. This limited period may not allow the expropriated party sufficient time to thoroughly examine the draft contract and, if necessary, seek legal or expert advice, such as from a lawyer or a real estate specialist, to formulate a well-founded counterproposal.

58. According to Article 11 (3) of the amended law, the methodology of evaluation of the market price of property being expropriated, including immovable property or property rights to the immovable property, and the procedure for conducting evaluation shall be prescribed by the Government. The evaluation reports prescribed by this part may not be a subject of examinations by the professional commission prescribed by the Law of the Republic of Armenia “On evaluation activities”.

59. According to Article 13 (1) of the amended law, the owner of the property being expropriated or the holder of property rights to the property being expropriated shall have the right to apply to the court within a period of three months following the state registration of the right of ownership of the acquirer with the claim to challenge the size of the compensation for expropriation of property. However, this challenge will not suspend the expropriation process.

60. The Commission acknowledges that it falls within the competence of the Constitutional Court of Armenia to determine whether this system is consistent with Article 60 (5) of the Armenian Constitution, which mandates prior and equivalent compensation. This is particularly relevant as the system in question allows for the possibility that a portion of the compensation may be allocated only after the transfer of property to the acquirer has already taken place. The Commission however clarifies that paying only part of the compensation in every instance does not necessarily satisfy the requirement of prior compensation. An effective mechanism should be in place to allow for exceptional challenges to any apparent inconsistencies or alleged injustices before the expropriation process is finalised. The Commission examines this issue in greater detail in the subsequent chapters of this Opinion.

61. The Venice Commission further observes that these amendments could encourage the conclusion of expropriation agreements between the acquirer and the expropriated party by raising the compensation amount by up to thirty percent. However, the Commission emphasises that this thirty percent increase should be shielded from any amortisation calculations or taxation, given that expropriation in the public interest is not, by nature, a purely voluntary transaction for the owner.

62. Moreover, the Venice Commission finds that it is essential that the valuation or expert assessment of expropriated property be carried out by qualified professionals with specialised expertise in the field. Additionally, to ensure consistency, the evaluation methodology for determining market value shall be clear and standardised and shall exclude contradictions, and

of the equivalent compensation being provided for the property being expropriated and the responsibilities of parties shall only be determined upon consent of parties. If there are holders of property rights known to the acquirer in relation to property being expropriated, the holders of property rights towards the property being expropriated shall also be party to the expropriation contract.

divergent practices in the expropriation process. To further enhance fairness and transparency, the legal framework should provide for the possibility of an alternative evaluation, ensuring that property owners have access to a competitive assessment process, which would allow for a more balanced and objective determination of compensation.

63. In their comments on the draft Opinion, the Armenian authorities state that Article 11 of the Law refers to the Law on Evaluation Activities, which regulates in detail matters related to the activities of appraisers. However, the Venice Commission has not had the opportunity to examine this law. Moreover, under these circumstances, it remains unclear to the Commission why an additional methodology for evaluation, to be established by the Government, is still considered necessary. The Venice Commission, therefore, considers it more appropriate that the methodology for the evaluation of property be determined by the Parliament rather than the Government and include the basic principles of calculation of the market price thus providing stronger safeguards against potential conflicts of interest.

64. Moreover, in accordance with the case-law of the ECtHR on expropriation cases in Armenia, it is essential that the law provides for the possibility of considering situations where the expropriated property generates significant income for the owner, leading to a substantial loss of revenue as a result of the expropriation.⁴³

65. Furthermore, although providing a thirty percent premium above market value as an incentive for owners does not inherently conflict with the European Convention, the law must at any rate ensure that “hindering” in Article 11 (1.1) of the amended law is not interpreted in a way that penalises good-faith objections or lawful procedural steps.

66. The Commission recommends extending the timeframe for submitting written objections to the draft expropriation contract and ensuring that “hindering” by the owner in the drawing up of the property description record is not misinterpreted to penalise legitimate objections or lawful procedural actions.

67. The Venice Commission further recommends that the methodology for the evaluation of property be determined by the Parliament rather than the Government and to ensure that the property valuations be conducted by qualified professionals using a clear, standardised methodology to prevent inconsistencies, as well as the property owners to have access to an alternative evaluation mechanism. It also recommends that thirty percent higher compensation be shielded from any amortisation calculations or taxation.

E. Legal remedy

1. Suspension of the expropriation decision

68. Legal remedies against the Government’s decision to recognise a matter as an “overriding public interest” will be governed by a newly introduced Chapter 27.1 of the Code of Administrative Procedure. Under this framework, the lawfulness of such a decision may be challenged before the Administrative Court (Articles 141 and 200.2) within one month following the entry into force of the decision (Article 200.3). The acceptance of an application by the court does not automatically suspend the enforcement of the decision (Article 200.5.1).

69. However, the court retains the discretion to grant suspension only with respect to the provisions relating to the right of ownership of the applicant “when the failure to render a decision on suspension may lead to irrevocable or dire consequences concurrently both for the applicant and the public” (Article 200.5.2). Additionally, a new provision introduced in Article 9 of the Law

⁴³ ECtHR, *Osmanyany and Amiraghyany v. Armenia*, para 69-70.

on Expropriation of Property reaffirms that challenging the decision does not suspend its enforcement, except in cases provided for by the Code of Administrative Procedure.

70. The Venice Commission underlines that the ECHR has on different occasions⁴⁴ emphasised that in principle, a measure interfering with the peaceful enjoyment of property cannot be legitimate in the absence of adversarial proceedings that comply with the principle of equality of arms and make it possible to challenge the measure taken and to present arguments on the amount of compensation. These procedural guarantees are, in principle, necessary to ensure that the operation of the system and its impact on the individual's property rights are neither arbitrary nor unforeseeable, but strike a fair balance, in each individual case, between the demands of the "public interest" and the requirements of the protection of the individual's rights.

71. The amendments establish a clear distinction between challenges to the Government's decision on recognising an overriding public interest and challenges to the determination of compensation. The Venice Commission recalls that the necessity for judicial review of the acts and decisions of the executive and other bodies performing public tasks is universally recognised, although national practice is very diverse. The Venice Commission finds that complaints concerning the executive's decision on the overriding public interest itself—its reasonableness, lawfulness, or other relevant aspects—should provide for suspensive effect by the judiciary in some cases. Otherwise, there is a risk of creating an undue imbalance that favours the public interest, contrary to the general principle allowing courts to suspend governmental measures at the appellant's request—one of the most robust safeguards of the rule of law.

72. It has been admitted by the ECtHR that the persons affected by a measure interfering with their "possessions" must be afforded a reasonable opportunity to put their case to the responsible authorities for the purpose of effectively challenging those measures, pleading, as the case might be, illegality or arbitrary and unreasonable conduct, while the absence of any suspensive effect or the vagueness of the relevant legal regulations may render this possibility illusory.

73. In this context, the Commission acknowledges that the amended law attempts to provide for judicial suspension of the executive's decision on the existence of an overriding public interest but restricts it to instances of "irrevocable or dire consequences both for the applicant and the public." The Commission observes, however, that the requirement that these consequences must arise concurrently for both the applicant and the public is rather unlikely, given that their interests frequently diverge.

74. The Venice Commission recommends granting a suspensive effect to challenges against the determination of an overriding public interest when either the applicant or the public faces "irrevocable or dire" consequences, rather than requiring both simultaneously.

2. Compensation claims

75. Legal remedies concerning the determination of compensation are regulated in the amended law and amendments to the Civil Procedure Code.

76. According to the amended law, in the event no expropriation contract is concluded within three months following the submission of the draft contract to the owner of the property subject to expropriation, the acquirer shall nevertheless obtain ownership. This shall occur through the deposit of the compensation amount with a notary or the court, accompanied by the notification of the owners. The compensation amount corresponds to the market value of the property, increased by fifteen percent, plus an additional ten percent to cover possible valuation deviations (Article 12(1)).

⁴⁴ ECtHR, *Hentrich v. France*, judgment of 22 September 1994, para 42, 45 and 49; *Immobiliare Saffi v. Italy* (GC), 28 July 1999, para 54; *Edwards v. Malta*, 24 October 2006, para 71.

77. If the notified owners collect the deposited amount within the prescribed timeframe, the expropriation contract is deemed to be concluded (Article 12(2)). However, if the notified owner fails to collect the deposited amount within the prescribed period, ownership of the property shall nonetheless be transferred to the acquirer (Article 12(6)). In such cases, the expropriated owner retains the right to challenge the amount of compensation before the courts within three months following the state registration of the property transfer (Article 13(1)). This appeal does not have suspensive effect. Should the court determine that the deposited amount is insufficient, it may grant an additional compensation to the expropriated owner (Article 13(2)(b)).

78. According to the amendments in the Code of Civil Procedure, disputes regarding the amount of compensation will be adjudicated by the court under the special claim procedure (Article 202). The court's jurisdiction in such cases is strictly limited to assessing the adequacy of the compensation amount (Article 234.20). It may not adopt any interim measures that would suspend the decision "on recognising as overriding public interest, state registration of the right of ownership of the acquirer or other actions arising therefrom and activities serving as a ground for the expropriation" (Articles 129.4 and 234.20(1)). Furthermore, Article 234.21(1) explicitly states that claims related to challenging the size of compensation shall not suspend the enforcement of the decision of the Government on recognising as overriding public interest, state registration of the right of ownership of the acquirer or other actions deriving therefrom and activities serving as a ground for expropriation.

79. According to the explanatory note, these provisions aim "not to link the continuity of the expropriation process with the judicial process of discussing and determining the amount of compensation." This approach seeks to prevent disputes regarding compensations from unduly delaying the implementation of expropriation measures undertaken in the public interest. Regarding the possibility of expropriation solely upon depositing the proposed compensation amount, the Venice Commission underscores that the underlying objective of this provision is to avert undue obstruction of public-interest projects.

80. The Commission further finds that this formulation along with Article 234.21(1) of the amended law risks arbitrarily excluding valid claims, as it may prevent suspension even where the compensation amount—or other pivotal aspects of the expropriation process—is credibly disputed.

81. The Venice Commission reiterates that it will be up to the Constitutional Court of Armenia to judge whether the system provided by the amended law complies with the provision in Article 60(5) of the Armenian Constitution that requires a "prior" and equivalent compensation, as this system implies that eventually an additional part of the compensation will be attributed after the transfer of property to the acquirer has already taken place.

82. Acknowledging the legitimacy of the aim to avoid undue delays and complications in pursuing the overriding public interest, the Commission nonetheless finds that, in order to strike a fair balance between the public and the private interests at stake, it is essential to establish an accelerated judicial review of the contested values on the bases of reports of independent experts,⁴⁵ or at least to guarantee that the decision on the compensation is based on a report from an independent expert and that the expertise is conducted in an adversarial manner.

83. The Venice Commission thus recommends establishing an accelerated judicial review of the contested values before expropriation is finalised, without causing undue delays to public-interest

⁴⁵ These procedures should ensure that property owners have a meaningful opportunity to dispute the adequacy of compensation before expropriation becomes final, while minimising undesired delays in the implementation of public-interest projects.

projects or at least to guarantee that the decision on the compensation is taken on the basis of the report of an independent expert.⁴⁶

IV. Conclusion

84. By letter of 22 January 2025, Ms Srбуhi Galyan, Minister of Justice of the Republic of Armenia, requested an opinion of the Venice Commission on the draft law of the Republic of Armenia “On making supplements and amendments to the Law of the Republic of Armenia on Expropriation of Property for Ensuring Overriding Public Interest,” along with supplementary legislation.

85. The Venice Commission finds that the proposed amendments reflect a genuine effort to align Armenia’s expropriation procedures with the requirements of the ECtHR, especially considering the Court’s extensive case-law on Armenian expropriations. By introducing clearer procedures and principles for establishing overriding public interest, enhancing compensation rules, and incorporating certain procedural safeguards, these amendments constitute a step forward, potentially reducing the risk of violations under Article 1 of Protocol No. 1 to the ECHR.

86. Nonetheless, the Commission emphasises that further refinement of the legislative framework is needed. While streamlining the expropriation process and preventing undue delays is a legitimate objective, any new provisions should not delegate legislative prerogatives to the executive or unduly restrict the procedural rights of property owners. Ambiguous terms in the context of the amended law such as “methodology,” “other required data,” “dire consequences for the applicant and the public” or “hindering” may give rise to enforcement uncertainties or deter owners from exercising their rights. Ensuring prompt and meaningful judicial oversight—particularly where disputes arise regarding compensation or the existence of an overriding public interest—remains crucial.

87. The Commission further underscores that by addressing these remaining ambiguities and further safeguarding owners’ procedural rights, the draft amendments can strike a more effective balance between efficiency in expropriation proceedings and full compliance with ECtHR principles. The Venice Commission thus provides a number of recommendations aimed at enhancing the legislative framework on expropriation of property for ensuring overriding public interest, thereby bringing it closer in line with international standards.

88. In particular, the Commission makes the following key recommendations:

- a. To stipulate a clearer definition of “hindrance” in Article 7 (6) of the amended law and to specify the provision concerning “other required data” in Article 7 (2)(g).
- b. Parliament to establish the main elements of the methodology for “justifying and reasoning the decisions on recognising expropriation as overriding public interest”.
- c. The thirty percent higher compensation for the expropriated property to be exempted from any amortisation calculations or taxation. In Article 10 (3) of the amended law to extend the timeframe for submitting written objections to the draft expropriation contract and in Article 10 (1.1) to ensure that “hindering” by the owner the drawing up of the record on description of property is not misinterpreted to penalise legitimate objections or lawful procedural actions.
- d. Parliament to define the methodology for the evaluation of property and the property valuations be conducted by qualified professionals using a clear, standardised

⁴⁶ The Venice Commission has not been able to assess to what extent the Law on evaluation activities already offers sufficient guarantees.

methodology and to provide an access to alternative evaluation mechanisms for the property owners.

- e. To grant a suspensive effect to challenges against the determination of an overriding public interest when either the applicant or the public faces “irrevocable or dire” consequences, rather than requiring both simultaneously.
- f. To establish an accelerated judicial review of the contested values before expropriation is finalised, without causing undue delays to public-interest projects or at least to guarantee that the decision on the compensation is taken on the basis of the report of an independent expert.

89. The Venice Commission remains at the disposal of the Armenian authorities for further assistance in this matter.