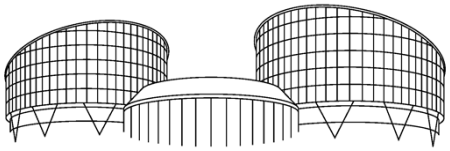

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF KIRAKOSYAN v. ARMENIA

(Application no. 50609/10)

JUDGMENT
(Merits)

STRASBOURG

22 June 2021

This judgment is final but it may be subject to editorial revision.

In the case of Kirakosyan v. Armenia,

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

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 50609/10) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Ms Emma Kirakosyan ("the applicant"), on 23 August 2010;

the decision to give notice to the Armenian Government ("the Government") of the application;

the decision to request further observations;

the parties' observations and their further observations;

Having deliberated in private on 1 June 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the alleged incomplete enforcement of a judgment against a private party whereby the latter was obliged to dismantle unlawful constructions hindering the applicant's property. It raises issues primarily under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

THE FACTS

2. The applicant was born in 1956 and lives in Yerevan. The applicant, who had been granted legal aid, was represented by Mr A. Ghazaryan, a lawyer practising in Yerevan.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant is the owner of the lower floor of a two-storey house located on a plot of land jointly owned with the neighbours who own the top floor of the house.

I. CIVIL PROCEEDINGS

6. On an unspecified date the applicant brought an action against her neighbour ("the debtor") seeking the demolition of a construction, together with stairs to the top floor of the house and a fence ("the constructions") that had been unlawfully installed by the latter, arguing that the constructions hindered her free enjoyment of her property.

7. On 15 November 2004 the Arabkir and Kanaker-Zeytun District Court of Yerevan ("the District Court") allowed the applicant's action and ordered the debtor to demolish the constructions.

8. On 3 March 2005 the Civil Court of Appeal upheld the judgment of 15 November 2004. The Civil Court of Appeal ruled that the constructions reduced the natural light and caused a high level of humidity in the applicant's house (as a result of which the bedroom could not be used for its intended purpose) and compromised the building's ability to withstand earthquakes. It furthermore ruled that in the event that the debtor refused to comply voluntarily with its judgment, the bailiffs of the Department for the Enforcement of Judicial Acts (hereinafter "the DEJA") would have to execute it at the expense of the debtor.

9. On 5 May 2005 the Court of Cassation upheld this judgment which thus became final.

II. FIRST SET OF ENFORCEMENT PROCEEDINGS

10. On 30 May 2005 the Civil Court of Appeal issued a writ of execution in respect of the judgment of 3 March 2005, and on 1 June 2005 the DEJA initiated enforcement proceedings.

11. On 10 June 2005 the bailiffs ordered the debtor to demolish the constructions by 30 June 2005. It appears that the debtor did not comply with that order.

12. On various dates in 2005 and 2006, the DEJA initiated, suspended and discontinued enforcement proceedings on various grounds.

13. On 10 May 2006 the bailiffs decided to discontinue the enforcement proceedings on the grounds that the constructions had been demolished and the judgment of 3 March 2005 fully enforced.

14. On 13 July 2006 the Civil Court of Appeal, upon the applicant's appeal, found that the DEJA had failed to enforce the judgment of 3 March 2005 and ordered the DEJA to enforce it. In its reasoning, the court referred to the bailiffs' failure to (i) fix a time-limit for the debtor's voluntary compliance with the writ of execution and (ii) oblige him to conduct demolition activities. In its judgment the Civil Court of Appeal did not adopt a standpoint regarding whether the demolition of the constructions had actually been completed. This judgment became final on 28 July 2006.

III. SECOND SET OF ENFORCEMENT PROCEEDINGS

15. On 30 August 2006 a second writ of execution was issued pursuant to the judgment of 13 July 2006, ordering the DEJA to enforce the judgment of 3 March 2005; on 15 September 2006 a new set of enforcement proceedings was initiated.

16. On 25 September 2006 the DEJA conducted an on-site examination. According to its report the constructions had been demolished and the requirements of the first writ of execution in respect of the judgment of 3 May 2005, issued on 30 May 2005, had been fulfilled on 10 May 2006. On that basis the bailiffs decided to discontinue again the enforcement proceedings.

17. On 24 January 2007 the applicant lodged an application with the District Court, asking it to annul that decision and to oblige the DEJA to enforce the judgment of 3 March 2005, in accordance with the judgment of 13 July 2006.

18. On 6 April 2007 the District Court conducted an on-site examination. During the examination the applicant showed part of the construction on the top floor of the house leading to the entrance which she claimed remained from the unauthorised construction that had been subject to demolition. She also showed metal pillars located on the street side, stating that they were the remains of the fence. The DEJA maintained its position that the parts of the construction and the fence indicated by the applicant had in fact been demolished. Thus, the District Court decided to request the State Real Estate Registry ("the SRER") to provide it with information identifying which of the unauthorised constructions had belonged to the debtor at the moment of the on-site examination. However, the SRER, in a letter of 17 April 2007, informed the District Court that no comprehensive information with respect to the unauthorised constructions and their location, the results of the on-site examination and a drawing of a plan could be provided because the debtor had hindered the on-site examination.

19. On 10 July 2007 the District Court rejected the applicant's applications and claims, holding that the actions of the DEJA had been lawful. The applicant appealed against that decision.

20. On 4 October 2007 the Civil Court of Appeal quashed the judgment of 10 July 2007 and allowed the applicant's action. In particular, it annulled the decision of 25 September 2006 and held that the judgment of 13 July 2006 (see paragraph 14 above) was to be enforced by the DEJA. The Civil Court of Appeal based its judgment on the facts previously established by other final and enforceable judgments, as by 13 July 2006 the judgment of 3 March 2005 had not been enforced. It also considered the existence of unauthorised constructions, as noted in the SRER's letter of 12 February

2007, as constituting further proof of the incomplete enforcement of the judgment of 3 March 2005.

IV. THIRD SET OF ENFORCEMENT PROCEEDINGS

21. On 8 October 2007 the Civil Court of Appeal issued a writ of execution in respect of the judgment of 4 October 2007.

22. On 24 October 2007 the DEJA annulled the decision of 25 September 2006 and ordered the bailiffs to enforce the judgment of 13 July 2006. The bailiffs also annulled the decision of 10 May 2006 with respect to the first set of enforcement proceedings. Apparently, the enforcement proceedings were resumed.

23. On 8 February 2008 and 25 February 2008, respectively, the bailiffs resumed the first and second sets of enforcement proceedings.

24. On 22 February 2008 the DEJA conducted an on-site examination and concluded that the constructions had been demolished. The record of that examination stated, in particular, that the on-site examination at the location had not revealed any construction, fence or stairs subject to demolition, as prescribed by the first writ of execution.

25. On 22 and 25 February 2008, respectively, the DEJA decided to discontinue the resumed proceedings in the light of the results of the above-mentioned on-site examination.

26. On 30 October 2008 the DEJA, in reply to the applicant's applications, reiterated to the Minister of Justice and the Chief Compulsory Enforcement Officer its earlier-stated position that, according to the results of the site examination of 22 February 2008, the constructions had been demolished.

27. On 14 May 2009 the applicant lodged an appeal against the decisions of 22 and 25 February 2008 with the Administrative Court, seeking to have the DEJA's actions declared unlawful and for it to be obliged to enforce the judgment of 4 October 2007 (see paragraph 20 above).

28. On 17 December 2009 the Administrative Court allowed the applicant's appeal, quashed the decision of 22 February 2008 and ordered the DEJA to enforce the judgment of 4 October 2007. The court reasoned that the record of the on-site examination of 22 February 2008 did not constitute clear and reliable evidence, as it had not been based on the opinion of a construction expert as regards whether or not the constructions had really been demolished. That judgment was upheld at final instance by the Court of Cassation on 24 February 2010.

V. FOURTH SET OF ENFORCEMENT PROCEEDINGS

29. On 23 April 2010 the Administrative Court issued a new writ of execution on the basis of the judgment of 17 December 2009.

30. On 31 May 2010 the DEJA resumed the sets of enforcement proceedings that had been discontinued on 22 and 25 February 2008, respectively.

31. On 4 June 2010 the bailiffs, together with specialists from the relevant department of the municipal council of the Arabkir district of Yerevan, conducted an on-site examination. Its report established that the construction, the stairs and the fence had been fully demolished.

32. On 18 June 2010 the DEJA decided once again to discontinue the enforcement proceedings.

33. On 13 July 2010 the applicant brought an action with the Administrative Court, seeking to have the decision of 18 June 2010 annulled and for the DEJA to be obliged to fully enforce the judgment of 17 December 2009. She argued, in particular, that despite the fact that no new demolition work had taken place, the bailiffs had discontinued the enforcement proceedings once again.

34. On 2 August 2011 the Administrative Court dismissed the applicant's action. It reached this conclusion by holding that the burden of proof in respect of the completeness (or otherwise) of the demolition lay with the applicant; accordingly, given that the applicant had failed to submit any evidence to the contrary, the court presumed that the demolition was complete.

35. On 12 December 2011 the Administrative Court of Appeal dismissed an appeal lodged by the applicant finding that the applicant had failed to prove the non-enforcement of the judgment of 3 March 2005; furthermore, she had not contested the record of the 4 June 2010 on-site examination, which the Administrative Court considered to constitute evidence with respect to the status of the demolition of the impugned constructions. Moreover, she objected to a new site examination being conducted.

36. On 15 February 2012 the Court of Cassation rejected as inadmissible an appeal on points of law lodged by the applicant.

VI. SUBSEQUENT PROCEEDINGS

37. On 7 October 2016 the applicant brought an action against D. and H., the debtor's legal heirs, requesting that they be ordered to demolish the remaining parts of the unauthorised constructions which the debtor had failed to dismantle pursuant to the judgment of the Civil Court of Appeal of 3 March 2005. In support of her action, the applicant submitted an expert opinion issued upon her request on 4 October 2016 according to which the

metal pillars of the unlawful construction, some components of the wall structure as well as a part of a steel and concrete shelter were still in place.

38. On 30 November 2017 the DEJA was involved in the proceedings as a third party.

39. On 30 March 2018 the Court of General Jurisdiction of Yerevan found in the applicant's favour and ordered D. and H. to demolish the remaining parts of the unauthorised constructions. With reference to the expert opinion of 4 October 2016, the court concluded that the applicant's property rights had been breached because the metal pillars of the unlawful construction and some components of the wall structure had in fact remained after the debtor had demolished the constructions.

40. On 30 May 2018 D. lodged an appeal against the judgment of 30 March 2018 arguing, in particular, that the Administrative Court's final and binding judgment of 2 August 2011 had confirmed that the applicant had failed to demonstrate that the judgment of 3 March 2005 had not been complied with. She also argued that it would not be possible to dismantle the parts of the unauthorised construction mentioned by the applicant without damaging the main building.

41. By decision of 3 October 2018 the Civil Court of Appeal upheld the judgment of 30 March 2018. It stated, in particular, that the applicant had submitted evidence, namely an expert opinion substantiating that the relevant unauthorised construction had not been fully dismantled. Additionally, the fact that the Administrative Court had rejected the applicant's argument concerning the incomplete demolition of the unauthorised construction in question for lack of evidence did not preclude the acceptance of her arguments in the case at hand upon submission of relevant evidence.

42. On 12 December 2018 the Court of Cassation declared the appeal on points of law lodged by D. and H. inadmissible for lack of merit. The judgment of 30 March 2018 thereby became final.

43. On 23 June 2020 the bailiffs decided to discontinue the enforcement of the judgment of the Court of General Jurisdiction of Yerevan of 30 March 2018 on the grounds that, as had been established by the construction and technical expertise, the demolition of the remaining parts of the given unauthorised construction would result in the collapse of the neighbours' toilet.

44. As of 1 October 2020, the applicant's appeal against the decision of 23 June 2020 was pending before the Administrative Court.

RELEVANT LEGAL FRAMEWORK

45. Under Article 5 of the Act on the Enforcement of Judicial Acts (in force since 1999), one of the means of enforcing the execution of judicial

acts is the imposition of a fine for failure to comply with decisions of the bailiffs.

46. Under Article 62 of the same Act, in the event that a writ of execution requires that a debtor undertake certain actions, the bailiffs are to specify the time-limit within which those actions shall be taken. If the debtor fails to undertake those actions within the applicable time-limit, the bailiffs must organise the execution of the requirements of the writ and will, moreover, be entitled to seize from the debtor a sum amounting to three times the expenses of the execution.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

47. The applicant complained of the authorities' failure to ensure the complete enforcement of the judgment of the Civil Court of Appeal of 3 March 2005. She relied on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1 to the Convention, which read as follows:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of 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."

A. Admissibility

48. The Government raised two objections as to admissibility. Firstly, the Government argued that the applicant had failed to apply to the Court within the six-month time-limit after the discontinuation of the enforcement proceedings for the third time on 22 and 25 February 2008 (see paragraph 25 above) or, alternatively, after receiving the DEJA's letter of 30 October 2008 stating that the constructions had been fully demolished (see paragraph 26 above). At that time, it had been clear (and the applicant should have realised) that any subsequent appeals could not lead to any

practical result and would therefore not amount to an effective remedy to be exhausted. The DEJA had already established on 10 May 2006 that the constructions, the stairs and the fence, as prescribed by the judgment of 3 March 2005, had been fully demolished (see paragraph 13 above). The applications that the applicant had subsequently lodged with the Administrative Court could not have offered her a reasonable prospect of success since they could only have resulted in the resumption of the same enforcement cycle, which would have led to an identical conclusion. The proceedings instituted by the applicant on 14 May 2009 (see paragraph 27 above) could hardly be considered effective in theory and had already proved to be ineffective in practice.

49. Secondly, the Government argued that the constructions had been demolished in full by 10 May 2006 and that the judgment of 3 March 2005 had been properly enforced by the DEJA between March and May 2006. Given that the DEJA had initiated the enforcement proceedings on 1 June 2005 and the actual execution had taken place on 10 May 2006, the overall duration of those proceedings had amounted to eleven months and ten days, which was not excessive. As the judgment of 3 March 2005 had been fully enforced in a timely manner, the applicant could not be considered to be a victim of the alleged violations complained of.

50. The applicant argued that the decisions of 22 and 25 February 2008 (see paragraph 25 above) could not be considered as constituting final decisions within the meaning of Article 35 of the Convention as they had been subject to effective judicial review. Neither could the DEJA's letter of 30 October 2008 (see paragraph 26 above) be considered as constituting a final decision for the purposes of Article 35 of the Convention. Moreover, the fact that the judgment in the applicant's favour had not been enforced constituted a continuous situation, since parts of the unauthorised construction had still been in place. The applicant had not remained inactive but had challenged the inaction on the part of the DEJA before the domestic courts, which had upheld her actions and had found in her favour. After the Civil Court of Appeal had ruled in her favour on 3 March 2005, and after three further judgments obliging the DEJA to enforce that ruling (see paragraphs 14, 20 and 28 above), she had realised that there was no prospect of having her rights enforced by the DEJA. She had thus lodged her application with the Court in a timely manner.

51. The applicant noted that as late as on 30 March 2018 the Court of General Jurisdiction of Yerevan had found that parts of the unauthorised constructions had still not been demolished (see paragraph 39 above) and that the judgment of 3 March 2005 had thus not been executed in full. The inaction on the part of the DEJA had dated from 3 March 2005 and was still on-going. Therefore, the applicant was still a victim.

52. The Court notes that, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies.

Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the applicant's knowledge of that act or its effect on or prejudice to the applicant (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009, and *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Nor can Article 35 § 1 be interpreted in a manner that would require an applicant to bring a complaint before the Court before his position in connection with the matter has been finally settled at the domestic level. Therefore, where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances that render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period as being the date on which the applicant first became (or ought to have become) aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001).

53. Turning to the present case, the Court notes that the applicant challenged several times the DEJA's decisions to discontinue the enforcement proceedings (see paragraphs 14, 17, 27 and 33 above). On more than one occasion the domestic courts upheld the applicant's appeals and found that the DEJA had failed to enforce the judgment of 3 March 2005 or the subsequent judgments in respect of the same matter (see paragraphs 14, 20 and 28 above). Only on 15 February 2012 was the applicant's appeal on points of law declared inadmissible by a final decision by the Court of Cassation (see paragraph 36 above). Given that the applicant lodged the present application with the Court on 23 August 2010, it follows that it was lodged in time. The Government's first objection must therefore be dismissed.

54. As to the Government's second objection, the Court observes that it concerns the essence of the applicant's complaint that the judgment in her favour was not fully enforced. The Court therefore considers that it should be joined to the merits of the case.

55. Accordingly, the Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

56. The applicant argued that the judgment of the Civil Court of Appeal of 3 March 2005 (see paragraph 8 above) had not yet been fully enforced. The judgment had still not been executed after fifteen years, and this violation continued each day. In her further submissions the applicant relied on the final judgment of the Court of General Jurisdiction of Yerevan dated

30 March 2018 (see paragraph 39 above) to argue that the judgment of 3 March 2005 has not been fully enforced.

57. The Government pointed out that, as determined by the decisions of the DEJA of 10 May 2006, 25 September 2006, 22 and 25 February 2008 and 18 June 2010 (see paragraphs 13, 16, 25 and 32 above) – and as later established by the Administrative Court and the Administrative Court of Appeal (see paragraphs 34 and 35 above) – the judgment of 3 March 2005 had been fully enforced. The 10 May 2006 decision had been the first document to recognise the full demolition of the constructions (see paragraph 13 above). On 25 September 2006 the enforcement proceedings had again been discontinued on the basis of a new on-site examination, according to which the demolition of the construction had already taken place on 10 May 2006 (see paragraph 16 above). Subsequently, the on-site examination conducted on 22 February 2008 (see paragraph 24 above) had revealed that no construction, fence and stairs subject to demolition under the first writ of execution had been found. The further set of proceedings had concerned the allegedly remaining part of the wall. Moreover, on the basis of the on-site examination of 4 June 2010 (see paragraph 31 above), the Administrative Court had considered it substantiated that by 10 May 2006 the constructions had been fully demolished (see paragraph 34 above). The judgment of 3 March 2005 had thus been fully enforced by 10 May 2006 and the demolition of the constructions had been effected less than one year after the initiation of enforcement proceedings.

58. In their further submissions the Government stated that the proceedings before the Court of General Jurisdiction of Yerevan, which ended with its judgment of 30 March 2018 as upheld in the final instance by the Court of Cassation (see paragraphs 39 and 42 above), and the enforcement proceedings in its respect, had no connection with the previous proceedings. They argued, in particular, that the elements of the construction which were subject to demolition pursuant to the judgment of 30 March 2018 had never been mentioned in the judgment of 3 March 2005.

2. The Court's assessment

59. The right to a court, embodied in Article 6 § 1, would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by a court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). The execution of a final, binding judicial decision cannot be unduly delayed (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 66, ECHR 1999-V). Furthermore, execution of such a decision must be full and exhaustive and not just partial (see *Sabin Popescu v. Romania*, no. 48102/99, §§ 68-76, 2 March 2004, and *Matheus v. France*, no. 62740/00, § 58, 31 March 2005).

60. In the same context, the impossibility for an applicant to obtain the execution of a judgment in his or her favour in due time constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Voytenko v. Ukraine*, no. 18966/02, § 53, 29 June 2004). An unreasonably long delay in the enforcement of a binding judgment may therefore breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002; *Burdov v. Russia (no. 2)*, no. 33509/04, § 65, ECHR 2009; and *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 50-53, 15 October 2009).

61. In so far as the enforcement of a judgment against a private debtor is concerned, the State's responsibility extends no further than the involvement of State bodies, including the domestic courts, in the enforcement proceedings (see, *mutatis mutandis*, *Shestakov v. Russia* (dec.), no. 48757/99, 18 June 2002; and *Kesyan v. Russia*, no. 36496/02, § 65, 19 October 2006). At the same time, the State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delay (see *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005).

62. Turning to the circumstances of the present case, the Court observes that, in delivering the judgment of 3 March 2005, which became final on 5 May 2005, the Civil Court of Appeal found in favour of the applicant, ordering the debtor to dismantle the constructions hindering the applicant's peaceful enjoyment of her property (see paragraphs 8 and 9 above). On 30 May 2005 the Civil Court of Appeal issued a writ of execution in respect of that judgment and on 1 June 2005 the DEJA initiated enforcement proceedings (see paragraph 10 above). On 10 May 2006 the enforcement proceedings were discontinued on the grounds that the constructions had been demolished and the judgment of 3 March 2005 fully enforced (see paragraph 13 above). However, on 13 July 2006 the Civil Court of Appeal found, at final instance, that the DEJA had failed to enforce the judgment of 3 March 2005 and ordered the DEJA to enforce it (see paragraph 14 above). Thereafter, each time that the DEJA decided to discontinue the enforcement proceedings (see paragraphs 13, 16 and 25 above), the applicant challenged its decisions and the domestic courts upheld her appeals (see paragraphs 14, 20 and 28 above). Only the DEJA's fourth decision of 18 June 2010 (to terminate the enforcement proceedings) (see paragraph 32 above) was upheld by the Administrative Court on the grounds that the applicant had failed to submit evidence that the constructions had not been completely demolished (see paragraph 34 above). That decision became final on 15 February 2012 (see paragraph 36 above).

63. The parties disagree as to whether the judgment of 3 March 2005 was fully enforced or whether it still remains unenforced. The applicant claims that a part of the construction remains to be demolished.

64. The Court observes that, even after the DEJA's decision of 18 June 2010 to terminate the enforcement proceedings was eventually upheld upon judicial review (see paragraphs 32 and 36 above), the applicant obtained another judgment in a distinct set of proceedings which essentially confirmed that parts of the unauthorised constructions that were subject to demolition pursuant to the judgment of 3 March 2005 were still in place. In particular, by its judgment of 30 March 2018 the Court of General Jurisdiction of Yerevan granted the applicant's claim against the debtor's legal heirs whereby she had submitted, on the basis of an expert opinion to that effect, that the relevant constructions had not been completely dismantled (see paragraphs 37 and 39 above).

65. The Government argued that the judgment of the Court of General Jurisdiction of Yerevan of 30 March 2018 did not concern the subject matter of the proceedings which had ended with the final judgment of 3 March 2005. The Court notes, however, it is clear from the formulation of the applicant's claim and her opponents' submissions that the dispute in the proceedings before the Court of General Jurisdiction of Yerevan did concern certain parts of the constructions which were to be demolished pursuant to the judgment of 3 March 2005 (see paragraphs 37 and 40 above). In its decision of 3 October 2018 the Civil Court of Appeal expressly stated that, notwithstanding the Administrative Court's findings in its judgment of 2 August 2011 which had entered into binding legal force, it was free to conclude – on the basis of relevant evidence submitted by the applicant – that the given constructions had not been fully demolished (see paragraph 41 above). In reply to the Government's argument (see paragraph 58 above), the Court finds it difficult to see how the parts of the relevant constructions which had remained in place could have been specifically mentioned in the initial judgment of 3 March 2005 when that judgment concerned the obligation to dismantle the entirety of the unauthorised constructions hindering the applicant's property.

66. In the light of the findings expressed in the judgment of 30 March 2018 of the Court of General Jurisdiction of Yerevan, confirmed by the decision of the Court of Appeal of 3 October 2018 (see paragraphs 39 and 41 above), the Court finds it established that the constructions indicated in the judgment of 3 March 2005 had not been completely dismantled.

67. Against this background, the Court finds that the judgment of 3 March 2005, which was favourable to the applicant, had still not been fully enforced as of 1 October 2020 (see paragraph 44 above) The Government have failed to advance any argument to justify this. In particular, they failed to explain the reasons for the authorities' failure to make use of the available legal means such as, for instance, imposing a fine on the debtor or, ultimately, organising the execution of the requirements of the writ at the debtor's expense (see paragraphs 45 and 46 above) to ensure the enforcement of the relevant judgments.

68 In view of the foregoing, the Court finds that the Armenian authorities, by failing to implement the final judgments in the applicant's favour, deprived the provisions of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention of all useful effect in the present case. It follows that the Government's objection as to the applicant's victim status should be rejected.

69. Accordingly, there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Government's second objection must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

70. The applicant also complained that she had no effective domestic remedies in respect of her complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. She relied upon Article 13 of the Convention, which provides as follows:

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

71. The Court has examined above the applicant's complaint about the failure of the authorities to ensure the full enforcement of the final judgment in her favour. It notes that the applicant's complaint under Article 13 is essentially a reiteration of her complaint that she was unable to obtain complete enforcement of a final judgment which would have enabled her to restore her property rights. In these circumstances, the Court considers that it is not necessary to examine the complaint separately under Article 13 (see *Jasiūnienė v. Lithuania*, no. 41510/98, § 32, 6 March 2003; and, *mutatis mutandis*, *Marini v. Albania*, no. 3738/02, § 151, 18 December 2007).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

73. The applicant claimed 7,670 euros (EUR) in respect of pecuniary damage suffered as a result of the decrease in the market value of her

property because of the incomplete demolition of the unauthorised construction in question.

74. The Government considered that there was no link between the violation found and the pecuniary damage alleged, that the amounts claimed for pecuniary damage were excessive and unsubstantiated and that, in any event, the market value of the land should be excluded.

75. The Court considers that the question of the application of Article 41 in respect of pecuniary damage is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

2. Non-pecuniary damage

76. The applicant claimed EUR 5,000 in respect of non-pecuniary damage.

77. The Government submitted that the applicant's claim in respect of non-pecuniary damage was excessive and unsubstantiated.

78. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

79. The applicant also claimed EUR 3,702 for the costs and expenses incurred both before the domestic courts and the Court. The claimed amount consisted of legal costs and postal expenses for the proceedings before the Court and the domestic courts as well as administrative expenses, court and expert fees incurred in the domestic proceedings. The applicant supported her claims for costs incurred before the Court by a copy of a contract for legal services pursuant to which she was liable to pay AMD 200,000 in the event of adoption of a judgment in her favour by the Court and receipts substantiating the costs of postal deliveries to the Court in the amount of AMD 44,600.

80. The Government contested her claims.

81. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see, among other authorities, *Hajnal v. Serbia*, no. 36937/06, § 154, 19 June 2012).

82. As regards the applicant's claims in respect of legal costs for the proceedings before the Court, it should be noted that the validity of contingency fee agreements for the purposes of making an award for legal

costs has been previously recognised by the Court (see, for the most recent example, *Anahit Mkrtchyan v. Armenia*, no. 3673/11, § 112, 7 May 2020). The Court sees no reason to depart from that approach in the present case and finds that the applicant's claims in this respect should be granted. As regards the remainder of the applicant's claims, the Court observes that, with the exception of the claims in respect of postal expenses incurred in the proceedings before the Court, the applicant has failed to substantiate that the claimed costs had been necessarily incurred to prevent or redress the violation found.

83. Regard being had to the documents in its possession and to its case-law, the Court rejects the applicant's claims for costs incurred in the domestic proceedings and awards the sum of EUR 422 covering the costs and expenses incurred in the proceedings before it.

C. Default interest

84. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's objection concerning the applicant's victim status to the merits;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention and *rejects* the Government's objection;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds* that the question of the application of Article 41 is not ready for decision in so far as pecuniary damage resulting from the violation found in the present case is concerned, and accordingly:
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicant to submit, within six months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President the power to fix the same if need be;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 422 (four hundred and twenty-two euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Tim Eicke
Deputy Registrar	President