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

FIRST SECTION

DECISION

Application no. 66535/10
Avag GEVORGYAN and Others
against Armenia

The European Court of Human Rights (First Section), sitting on 14 January 2020 as a Chamber composed of:

Ksenija Turković*, President,*
Krzysztof Wojtyczek,
Armen Harutyunyan,
Pere Pastor Vilanova,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski, *judges,*
Raffaele Sabato, *substitute judge,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 November 2010,

Having regard to the decision to give notice of the complaints concerning the lack of a public hearing, the absence of regulation of written proceedings and limited scope of review upon appeal to the Armenian Government ("the Government") and to declare inadmissible the remainder of the application,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, whose details are set out in the appendix, were represented by Mr Mezhlumyan, a lawyer practising in Yerevan.

2. 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.

A. The circumstances of the case

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

1. The facts submitted by the applicants at the time of the introduction of the application

4. On 26 June 2009 the Government adopted Decree no. 944-N approving the expropriation zones of citizens' plots of land situated in the rural community of Halidzor in the Syunik Region to be taken for State needs and changing the category of land use. The plots of land belonging to the applicants were listed among the units of land falling within these expropriation zones.

5. On 8 October 2009 the applicants lodged a claim with the Administrative Court seeking to annul Decree no. 944-N. They alleged, *inter alia,* that the Decree did not comply with the requirements of the Law on Alienation of Property for the needs of Society and the State and violated their rights under Article 1 of Protocol No. 1 to the Convention.

6. By its decision of 14 October 2009 the Administrative Court returned the applicants' claim, stating that they had failed to submit proof of having sent a copy of their claim and supporting documents to the defending party.

7. On 27 October 2009 the applicants resubmitted their claim. At the same time they requested the Administrative Court to examine their claim in oral procedure.

8. On 25 February 2010 the applicants received a letter dated 22 February 2010 from the Administrative Court which stated that the examination of their claim would be conducted via written proceedings, in accordance with Article 138 of the Administrative Procedure Code. It further stated that the delivery of the judicial act was to take place on 1 March 2010.

9. On 1 March 2010 the applicants submitted a written request to the Administrative Court asking for a public oral hearing of their claim. They argued, in particular, that the right to a public hearing was guaranteed by Article 19 of the Constitution and Article 6 of the Convention and that these provisions had direct application in the domestic legal system according to Article 6 of the Constitution. They further argued that, as a result of the absence of public examination of their case and the eventual delivery of the decision on the merits, their rights under the said provisions had been violated. They also complained of having been deprived of the possibility to submit evidence in support of their claim because of the way the proceedings were conducted.

10. By its judgment delivered the same day, the Administrative Court rejected the applicants' claim on the merits and dismissed their request to hold a public hearing. In doing so, it stated that it did not consider it

necessary to apply the exception under Article 138 of the Administrative Procedure Code by carrying out oral proceedings, since the applicants' case was not high profile and that would not contribute to the speedy examination of the circumstances of the case since the parties had submitted the documents at their disposal.

11. On 1 April 2010 the applicants lodged an appeal on points of law. They argued, *inter alia*, that no public hearing had been held in their case and they had merely been notified of the date and the place of the delivery of the decision on the merits. They complained of the fact that, apart from the delivery of the judgment, no hearings had been held where they could present their arguments in support of their claims and submit additional evidence. The applicants argued that the Administrative Court had confused two different concepts: public hearing and oral hearing, the first one being a fundamental principle enshrined in the Constitution which could be derogated from only in exceptional circumstances envisaged by the Constitution and the Convention. They submitted that no such circumstances existed in their case and therefore the refusal to hold a public hearing had violated their rights under Article 19 of the Constitution and Article 6 of the Convention.

12. On 5 May 2010 the Court of Cassation declared the applicants' appeal on points of law inadmissible for lack of merit by confirming the findings of the lower court as to the merits. As to the applicants' complaint concerning the lack of a public hearing, the Court of Cassation stated that, given its procedural nature, this complaint was not subject to review in accordance with Article 141 § 1 of the Code of Administrative Procedure. At the same time the Court of Cassation made reference to the case-law of the Court in relation to the requirements of Article 6 § 1 as regards the right to a public hearing.

2. The facts submitted by the Government after communication of the application

13. Following the proceedings before the Court of Cassation, which ended with the decision of 5 May 2010, the applicants applied to the Constitutional Court asking it to examine the compatibility of Article 141 § 1 of the Code of Administrative Procedure with the Constitution.

14. By its decision of 8 February 2011 the Constitutional Court found Article 141 § 1 of the Code of Administrative Procedure to be incompatible with the Constitution in so far as it restricted a person's right to appeal on procedural grounds against the decisions of the administrative court in cases concerning disputes over the lawfulness of normative legal acts.

15. On 14 April 2011 the applicants applied to the Court of Cassation seeking review of its decision of 5 May 2010 based on the decision of the Constitutional Court of 8 February 2011 as a new circumstance.

16. On 4 May 2011 the Court of Cassation accepted the applicants' application for examination.

17. By its decision of 29 July 2011 the Court of Cassation partially granted the applicants' appeal on points of law of 1 April 2010. In particular, the Court of Cassation, having regard to the decision of the Constitutional Court of 8 February 2011, found that its decision of 5 May 2010 should be subject to review in its part concerning the refusal to consider the applicants' complaint concerning the lack of a public hearing. As a result, the Court of Cassation examined the applicants' arguments concerning the lack of a public hearing before the Administrative Court and rejected them. In doing so, the Court of Cassation concluded that the refusal by the Administrative Court to hold an oral hearing was compatible with the requirements of Article 138 of the Administrative Procedure Code.

18. On 17 January 2012 the applicants applied to the Constitutional Court asking it to examine the compatibility of Article 138 of the Code of Administrative Procedure with the Constitution.

19. By its decision of 11 April 2012 the Constitutional Court found Article 138 of the Administrative Procedure Code to be compatible with the Constitution.

B. Relevant domestic law and practice

1. The Constitution of 1995 (following the amendments introduced on 27 November 2005 with effect from 6 December 2005)

20. According to Article 6 the Constitution has supreme legal force, and its norms apply directly. International treaties are an integral part of the legal system of the Republic of Armenia. If ratified international treaties define norms other than those provided for by law, such norms shall apply.

21. According to Article 19, everyone has the right to a public hearing of his case by an independent and impartial court within a reasonable time, in conditions of equality and with respect for all fair trial requirements, in order to have his violated rights restored, as well as the validity of the charge against him determined.

2. The Code of Administrative Procedure (in force from 1 January 2008 until 7 January 2014)

22. According to Article 135 the Administrative Court has jurisdiction over disputes concerning the compliance of Government decisions with normative acts having higher legal force (except the Constitution).

23. According to Article 138 the Administrative Court carries out written proceedings in cases envisaged by Article 135 with the exception of those cases where, in the court's view, the given case has become high

profile or where oral examination will contribute to the speedy establishment of the circumstances of the case.

24. According to Article 141 § 1, appeal against the decisions of the administrative court in cases concerning disputes over lawfulness of normative legal acts lies to the Court of Cassation only on the ground of violations of substantive law.

3. The case-law of the Constitutional Court

25. By its decision of 8 February 2011 on the conformity of Article 141 § 1 of the Code of Administrative Procedure with the Constitution (*ՀՀ սահմանադրական դատարանի 2011թ. փետրվարի 8-ի որոշումը քաղաքացիներ Շավարշ, Ռայա Մկրտչյանների և այլոց դիմումի հիման վրա՝ ՀՀ վարչական դատավարության օրենսգրքի 141-րդ հոդվածի 1-ին մասի՝ ՀՀ սահմանադրությանը համապատասխանության հարցը որոշելու վերաբերյալ*) the Constitutional Court found Article 141 § 1 of the Code of Administrative Procedure to be incompatible with the Constitution in so far as it restricted a person's right to appeal on procedural grounds against the decisions of the administrative court in cases concerning disputes over lawfulness of normative legal acts. The Constitutional Court found, in particular, that the restriction imposed by Article 141 § 1 of the Code of Administrative Procedure limited a person's constitutional right to effective judicial protection.

26. By its decision of 11 April 2012 on the conformity of Article 138 of the Code of Administrative Procedure with the Constitution (*ՀՀ սահմանադրական դատարանի 2012թ. ապրիլի 11-ի որոշումը քաղաքացի Շավարշ Մկրտչյանի և այլոց դիմումի հիման վրա՝ ՀՀ վարչական դատավարության օրենսգրքի 138-րդ հոդվածի՝ ՀՀ սահմանադրությանը համապատասխանության հարցը որոշելու վերաբերյալ*) the Constitutional Court found Article 138 of the Code of Administrative Procedure to be *per se* compatible with the Constitution pointing out, however, a legal vacuum in the administrative procedure as regards the absence of a clear procedure for conducting written proceedings. The Constitutional Court stated that in circumstances where no precise rules of written proceedings were envisaged by the legislation, absolute discretion was left to the court in deciding the ways in which the parties could exercise their procedural rights. Also, the Constitutional Court referred to the need to implement the necessary legislative changes to ensure the protection of parties' procedural rights, particularly as regards the procedure and time-limits for submission of documents, additional evidence and the duties of the court in relation to organisation of the correspondence between the parties on the one hand and between the court and the parties on the other hand.

COMPLAINTS

27. The applicants complained under Article 6 § 1 of the Convention that they did not have a public hearing before the Administrative Court and that the Court of Cassation did not address their complaint about the lack of a public hearing since, by virtue of Article 141 § 1 of the Code of Administrative Procedure, it was precluded from examining appeals on procedural grounds.

THE LAW

28. Complaining of a lack of a public hearing before the Administrative Court and of a lack of effective access to the Court of Cassation in that respect, the applicants relied on Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

A. The parties' submissions

29. The Government submitted that the refusal by the Administrative Court to hold an oral hearing in the applicants' case could not be considered to have constituted a refusal to hold a public hearing. The written proceedings conducted in the present case were public and therefore in full compliance with the requirements of Article 6 § 1 of the Convention. The Government further submitted that the applicants could no longer claim to be victims of a violation of Article 6 § 1 of the Convention in so far as their complaint concerning the failure by the Court of Cassation to examine their appeal on points of law on procedural grounds was concerned. In this regard, the Government pointed out the developments which had taken place after the introduction of the present application, namely the decision of the Constitutional Court of 8 February 2011 resulting in the reopening of the proceedings by the Court of Cassation and the subsequent examination of the applicants' complaint concerning the lack of a public hearing.

30. The applicants submitted that the failure by the Administrative Court to hold a public hearing was in breach of the requirements of Article 6 § 1 of the Convention. They maintained their complaint with regard to the alleged lack of effective access to the Court of Cassation, stating that proceedings before the Constitutional Court were not an effective domestic remedy.

B. The Court's assessment

31. The Court observes at the outset that the applicants failed to inform the Court about the developments that occurred during the proceedings before the Court. In particular, the applicants failed to inform the Court of the re-examination of their appeal on points of law by the Court of Cassation following the decision of the Constitutional Court of 8 February 2011 (see paragraphs 13 to 19 above), that is to say three years before communication of the present application to the Government, on 18 March 2014.

32. The Court further observes that the Government did not argue that the applicants' failure to inform the Court of the developments in question amounted to an abuse of the right of individual petition, within the meaning of Article 35 § 3 of the Convention. The Court reiterates, however, that it has previously emphasised that the question of possible abuse can also be raised by it *proprio motu* (see *Shalyavski and Others v. Bulgaria*, no. 67608/11, § 43, 15 June 2017).

33. The concept of "abuse", within the meaning of Article 35 § 3 of the Convention, must be understood as any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and that impedes the proper functioning of the Court or the proper conduct of the proceedings before it (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 65, 15 September 2009). An application may be rejected as an abuse of the right of individual petition if it has been established that it was knowingly based on untrue facts or if the applicant submitted incomplete or misleading information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references). The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (ibid., § 28). Lastly, not every omission of information will amount to abuse; the information in question must concern the very core of the case (see, for example, *Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013).

34. Turning to the present case, the Court notes that in their application lodged on 3 November 2010, the applicants complained that their right to a public hearing and to effective access to a court had been violated because of the Administrative Court's refusal to hold a public hearing and because

the Court of Cassation had subsequently not examined their complaints in that respect with reference to Article 141 § 1 of the Code of Administrative Procedure.

35. The Court observes that on 8 February 2011 the Constitutional Court, having examined the applicants' application, found Article 141 § 1 of the Code of Administrative Procedure to be incompatible with the Constitution (see paragraphs 13, 14 and 25 above). Thereafter, the Court of Cassation granted the applicants' request to re-examine their appeal on points of law of 1 April 2010 and by its decision of 29 July 2011 examined the applicants' arguments concerning the lack of a public hearing before the Administrative Court (see paragraphs 11, 16 and 17 above). On 18 March 2014, before learning of the re-examination of the applicants' appeal on points of law by the Court of Cassation, the Court communicated the applicants' complaints to the respondent Government. The Court only learned of the re-examination of the applicants' appeal on points of law from the Government's observations of 15 July 2014.

36. It is to be noted that the relevant decisions were adopted after the application had been lodged with the Court, and that the applicants could not have anticipated that the Constitutional Court would grant their application and that the Court of Cassation would then re-examine their initial appeal on points of law. However, according to Rule 47 § 7 of the Rules of Court, applicants have the obligation to keep the Court informed of all circumstances relevant to the application. Although applicants are by no means expected to set out all possible information about a case in their application, it is their duty to present, at least, the essential facts at their disposal which are clearly of significant importance for the Court to be able to assess the case properly (see *Komatinović*, cited above). In the present case, however, the applicants failed to meet this obligation. Not only did the applicants, who were represented by the same lawyer in the initial and subsequent domestic proceedings as well as before the Court, omit to inform the Court of the developments in question, but they did not provide any explanation for their omission.

The only argument put forward by the applicants in that regard was that proceedings before the Constitutional Court of Armenia are not an effective remedy for complaints lodged with the Court. While that argument can be accepted to justify the applicants' failure to inform the Court of the Constitutional Court's decision of 11 April 2012 (see paragraphs 18, 19 and 26 above), it cannot be accepted as an adequate explanation for their omission to inform the Court of the Constitutional Court's decision of 8 February 2011 and the decision of the Court of Cassation of 29 July 2011 (see paragraphs 14, 17 and 25 above) for the following reasons. Although the constitutional remedy is generally not considered as a domestic remedy to be exhausted due to the specificities of the judicial role of the Armenian Constitutional Court, in the circumstances where that remedy has been

successful to the extent that it has led to the re-examination or, more importantly, a possible redress of the very complaint lodged before the Court, the Court should at least be informed of such developments to be able to examine the applicants' complaint in the light of all the relevant facts and underlying circumstances.

Against this background, the Court finds sufficient elements to establish that the applicants, by their failure to comply with their duty under Rule 47 § 7 of the Rules of Court, intentionally prevented the Court from having full knowledge of the facts of the case (see paragraph 33 above).

37. The Court is moreover convinced that the developments in question concerned the very core of the subject matter of the present application. In particular, while the fact of re-examination of the applicants' appeal on points of law against the Administrative Court's judgment of 5 May 2010 undoubtedly concerned the determination of the question of whether the applicants could still claim to be victims of an alleged violation of their right to a court, the arguments relied on by the Court of Cassation in its decision of 29 July 2011 to reject the applicants' arguments concerning the violation of their right to a public hearing were of relevance for the examination of the same complaint by the Court.

38. In the light of the foregoing, the Court considers that the applicants' conduct in the present case was manifestly contrary to the purpose of the right of individual application.

39. Accordingly, this application as a whole must be rejected as an abuse of the right of individual petition pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 6 February 2020.

Renata Degener Deputy Registrar	Ksenija Turković President

Appendix

No.	Applicant's Name	Birth date	Nationality	Place of residence
1	Avag GEVORGYAN	03/01/1958	Armenian	Halidzor village
2	Anna GEVORGYAN	05/01/1967	Armenian	Halidzor village
3	Arkadia GEVORGYAN	05/05/1985	Armenian	Halidzor village
4	Artavazd GEVORGYAN	26/08/1986	Armenian	Halidzor village
5	Arshaluys MINASYAN	05/01/1967	Armenian	Halidzor village
6	Raya MKRTCHYAN	18/01/1947	Armenian	Halidzor village
7	Shavarsh MKRTCHYAN	18/11/1939	Armenian	Halidzor village
8	Vrezhik MKRTCHYAN	20/06/1965	Armenian	Halidzor village
9	Hrayr ZAKHARYAN	16/09/1980	Armenian	Halidzor village
10	Julieta ZAKHARYAN	15/11/1952	Armenian	Halidzor village
11	Nelli ZAKHARYAN	19/06/1977	Armenian	Halidzor village
12	Sashik ZAKHARYAN	02/01/1947	Armenian	Halidzor village