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

FIRST SECTION

DECISION

Application no. 2126/12
Arusyak PETROSYAN
against Armenia

The European Court of Human Rights (First Section), sitting on 11 September 2018 as a Committee composed of:

Aleš Pejchal, *President,*
Armen Harutyunyan,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 6 December 2011,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Arusyak Petrosyan, is an Armenian national who was born in 1954 and lives in Yerevan. She was represented before the Court by Ms S. Safaryan, a lawyer practising in Yerevan.

2. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Government of Armenia to 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.

4. In 2009 the Mayor of Yerevan initiated civil proceedings in the Kentron and Nork-Marash District Court of Yerevan, with a view to terminating an agreement with a private company V. ("the company") and

seeking damages. The agreement had authorised the company to act on behalf of the State and conclude contracts with individuals upon the termination of their property rights in respect of real estate expropriated for State needs, and provide them with apartments in compensation for the expropriated property.

5. On 19 April 2011 the District Court decided to join the applicant to the civil proceedings as a third party as she had concluded a contract with the respondent company, which had been obliged to provide her with an apartment in respect of which she had already acquired ownership rights. A number of other individuals also became involved in the proceedings as third parties.

6. On 28 April 2011 the District Court allowed the mayor's claim, invalidated the disputed agreement and ordered the company to pay compensation to the State for failure to discharge its contractual duties.

7. On 27 May 2011 the applicant lodged an appeal against the judgment of 28 April 2011.

8. On 28 June 2011 the Civil Court of Appeal declared the applicant's appeal inadmissible on the basis that she had failed to attach to her appeal proof that she had notified the other parties to the proceedings. According to the Government, the applicant was given a two-week time-limit in order to eliminate the shortcomings and to resubmit her appeal.

9. The applicant submitted that on 6 July 2011 she asked the Civil Court of Appeal to provide her with a list of the names and addresses of the other parties who needed to be notified. The Government submitted that she only requested access to the materials of the civil case.

10. The applicant claimed that on 8 July 2011 the Civil Court of Appeal provided her with a list containing the names and addresses of the other parties for notification. The Government submitted that, on that date, the applicant's representative had consulted the case file.

11. The applicant stated that she had sent notifications to the other parties, according to the list. On 12 July 2011 she filed her appeal against the judgment of 28 April 2011 again. The receipts of notifications sent to the other parties were annexed to her appeal. However, no proof was provided that A.M. and Kh.A. had also been notified.

12. On 15 July 2011 the Civil Court of Appeal declared the applicant's appeal inadmissible on the basis that she had failed to attach to her appeal proof that she had notified the two above-mentioned parties, A.M. and Kh.A.

13. The applicant lodged an appeal on points of law against the decision of 15 July 2011 arguing, *inter alia*, that she could not have notified the two individuals indicated by the Civil Court of Appeal, namely A.M. and Kh.A., since their names and addresses had not been on the list of 8 July 2011.

14. On 14 September 2011 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

B. Relevant domestic law

The Code of Civil Procedure of the Republic of Armenia (in force from 1 January 1999)

15. Article 209 § 1 of the Code provides that an appeal shall be properly filed with the Court of Appeal, the persons participating in the case shall be notified, and that a copy of the appeal shall be sent to the Court of First Instance having rendered the judicial act.

16. Article 210 §§ 1 and 4 of the Code provide that:

> "1. An appeal shall be compiled in writing and should contain:
>
> ...
>
> (2) names (titles) of the person having lodged the appeal and those of the persons participating in the case;
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> ...
>
> 4. Proof evidencing that the State duty is paid, that the copies of the appeal are sent to the court having rendered the judicial act and to the persons participating in the case, shall be enclosed with the appeal[.]"

17. Under Article 211 of the Code, the person lodging the appeal shall be obliged to forward in due manner the copies of the appeal and enclosed documents to other persons participating in the case.

18. Article 213 §§ 1, 3 and 4 of the Code provide that:

> "1. The appeal shall be returned if:
>
> (1) The requirements provided for in Article 210 of this Code have not been complied with;
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> ...
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> 3. After the return of the appeal on the grounds provided for in point 1(1) of this Article, the appeal shall be considered as accepted in the court in case of elimination of the shortcomings existing in it and resubmission of the appeal within a period of two weeks after receiving the decision. In case of resubmission of the appeal, no new time-limit shall be provided for the elimination of any further shortcomings.
>
> 4. The decision of the Court of Appeal on returning the appeal may be appealed against through review procedure within a period of two weeks after receiving the decision."

COMPLAINT

19. The applicant complained under Article 6 of the Convention that her right of access to court had been breached because she had been deprived of the opportunity to appeal against the judgment of 28 April 2011.

THE LAW

20. The applicant complained under Article 6 § 1 of the Convention about the violation of her right of access to the Civil Court of Appeal.

21. Article 6 § 1 of the Convention reads in the relevant parts as follows:

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

A. The parties' submissions

1. The Government

22. The Government noted that the applicant had requested and received all materials in the case file for consultation. She had asked for this, rather than requesting any list containing the names and addresses of the third parties. It appeared from the case file that on 6 July 2011 the applicant had only asked to consult the case file and that she had never filed an official request in order to receive a list of names from the Civil Court of Appeal.

23. The Government further noted that, after receiving the decision of the Civil Court of Appeal of 28 June 2011, it should have been clear to the applicant that, in the event of resubmitting the appeal, it was necessary to comply with the mandatory requirement to send copies of the appeal to all parties to the proceedings. The applicant had twice failed to comply with these requirements. After the first time, the court had provided the applicant with an opportunity to remedy the shortcomings. Although there had been a number of third parties, it had been obvious from the case file that A.M. and Kh.A. had been involved in the case. Moreover, the applicant had been represented by a lawyer throughout the proceedings. The refusal by the Civil Court of Appeal to examine the applicant's appeal was thus prescribed by domestic law and pursued a legitimate aim.

24. As to the proportionality, the Government maintained that a fair balance had been struck between the different interests. The limitation imposed on the applicant had not impaired the essence of her right of access to a court. Had the applicant submitted an incomplete list of notifications with her initial appeal, the Civil Court of Appeal could have provided the names of the parties to be notified in its decision to return the appeal. Moreover, the applicant's arguments had been fully addressed by the Civil Court of Appeal in the proceedings initiated by another party. There were thus no disproportionate limitations to the applicant's access to a court in the present case.

2. The applicant

25. The applicant argued that she and her representative had had no other way of giving notification, especially within the two-week period. The

applicant had not had such broad opportunities as the Civil Court of Appeal to give notification to the parties, her only possibility being to give notification to those parties whose addresses had been provided by the court. It was not relevant whether the names and addresses of the other parties had been based on a summary list provided orally by the court or had been found out by her representative by consulting the case file, as long as the list provided by the court complied with the recorded fact on the third parties' addresses available in the case. The court's letter dated 8 July 2011 had been considered by the applicant and her representative as being an official document and therefore they had not doubted the correctness of the addresses given.

26. The applicant disagreed with the Government that her participation in another set of proceedings as a third party would have granted her *de facto* access to a court in respect of all her arguments. She had made an investment for which she had never received any compensation. She should therefore have been able to bring her own claims and present her own demands on equal grounds with the municipality of Yerevan.

B. The Court's assessment

1. General principles

27. The Court reiterates that Article 6 § 1 of the Convention embodies the 'right to a court' of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18). This right to a court extends only to 'disputes' ('*contestations*' in the French text) over 'civil rights and obligations' which can be said, at least on arguable grounds, to be recognised under domestic law. The 'dispute' must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question (see *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43, ECHR 2000-IV).

28. The Court reiterates that the "right to a court" is not absolute. It is subject to limitations permitted by implication, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. Nonetheless, the limitations applied must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. Lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Levages Prestations Services v. France*, 23 October 1996, § 40, *Reports of*

Judgments and Decisions 1996-V citing *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93; *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 59, Series A no. 316-B; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012).

29. The Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations" (see *Levages Prestations Services*, cited above, § 44; and *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32). However, the manner in which Article 6 § 1 is to be applied in relation to appellate or cassation courts depends upon the special features of the proceedings involved. Account must be taken of the entirety of the proceedings conducted in the domestic legal order and of the role of the appellate or cassation court therein (see *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 56, Series A no. 115 and the cases cited therein, and *Tolstoy Miloslavsky*, cited above, § 59).

30. It is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts of appeal and of first instance, to resolve problems of interpretation of domestic legislation (see *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, § 33, ECHR 2000-I, and *Domazyan v. Armenia*, no. 22558/07, § 37, 25 February 2016). The role of the Court is limited to verifying whether the effects of such interpretation are compatible with the Convention. This applies in particular to interpretation by courts of rules of a procedural nature (see, among many other authorities, *Nowiński v. Poland,* no. 25924/06, § 32, 20 October 2009).

2. Application of these principles to the present case

31. The Court notes first of all that the applicant's claim clearly concerned a civil matter, namely a contract which was to provide her with an apartment in respect of which she had already acquired ownership rights. It is equally clear that the case concerned a 'dispute' over 'civil rights and obligations' which was, at least on arguable grounds, to be recognised under domestic law. The 'dispute' was genuine and serious, and the outcome of the proceedings would have been directly decisive for the right in question.

32. The Court observes that the applicant tried twice to lodge an appeal with the Civil Court of Appeal but the latter refused to examine her case since the applicant had failed properly to notify all third parties of her appeal. As a consequence, the applicant was denied access to the Civil Court of Appeal in respect of her civil claim.

33. Article 210 of the Code of Civil Procedure provides, *inter alia*, that an appeal should contain the names of the person having lodged the appeal and of the persons participating in the case, as well as proof that copies of the appeal have been sent to the persons participating in the case. In accordance with Article 213 of the same Code, an appeal shall be returned if the requirements provided for in Article 210 of the Code have not been complied with. An appeal can thereafter be accepted if the shortcomings have been remedied and the case has been resubmitted within the time-limit of two weeks after the receipt of the decision. In case of resubmission of the appeal, no new time-limit shall be provided for the elimination of any further shortcomings (see paragraphs 16 and 18 above).

34. The Court notes that a requirement to comply with the procedural provisions on notification cannot be regarded as a restriction on the right of access to a court which is incompatible *per se* with Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Nalbandyan v. Armenia*, nos. 9935/06 and 23339/06, § 146, 31 March 2015). Such rules are undoubtedly designed to ensure the proper administration of justice and to guarantee the compliance with the fair trial principle. Those concerned must normally expect such rules to be applied (see, *mutatis mutandis*, *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, § 45, *Reports of Judgments and Decisions* 1998-VIII, and *Mamikonyan v. Armenia*, no. 25083/05, § 27, 16 March 2010). In the present case, the refusal by the Civil Court of Appeal to examine the applicant's appeal was based on clear domestic law provisions which had been foreseeable to the applicant. The applicant did not even allege the contrary. These procedural rules thus clearly pursued a legitimate aim.

35. Moreover, the domestic system provides a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. The domestic provisions provide for an opportunity for a plaintiff to eliminate any procedural shortcomings and to resubmit the case within the time-limit of two weeks. There is thus a mechanism in place which is designed to eliminate possible mistakes made by the plaintiff in lodging his or her case and which clearly promotes the plaintiff's right of access to a court. In the present case, the applicant was given this opportunity after her first appeal was declared inadmissible by the Civil Court of Appeal on 28 June 2011 on the basis that she had failed to attach to her appeal any proof of the notification of the other parties (see paragraph 8 above). However, in accordance with the national law, this opportunity was lost when she again made a procedural error when filing her case for the second time. The applicant was represented by a lawyer throughout the proceedings.

36. The applicant's main argument is that the Civil Court of Appeal had provided her with a list of parties to be notified but that this list was incorrect in that it had failed to mention two of the parties. The Government

denied that any such list had been sent to the applicant but claimed instead that the applicant's lawyer had consulted the case file and found there the names of the parties to be notified. The Court observes that, in the case file submitted to the Court, there is no evidence to support the applicant's allegation. On the contrary, the Government have submitted to the Court a document dated 6 July 2011 which clearly shows that the applicant requested the domestic court only to give her permission to consult the case file and that such a consultation took place on 8 July 2011 (see paragraphs 9 and 10 above).

37. The case file before the domestic court may have contained an unofficial list of names of the parties which may have been used by the applicant for notification purposes, perhaps without verifying its completeness. However, in the present circumstances, the Court is unable to find any evidence supporting the applicant's complaint that her access to the Civil Court of Appeal had been unduly restricted by actions attributable to the respondent State.

38. Accordingly, it follows that the application must be rejected under Article 35 §§ 3 (a) and 4 of the Convention for being manifestly ill-founded.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 4 October 2018.

Renata Degener Deputy Registrar	Aleš Pejchal President