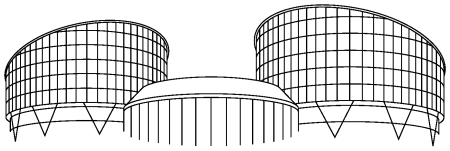

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF AGANIKYAN v. ARMENIA

(Application no. 21791/12)

JUDGMENT

STRASBOURG

5 April 2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Aganikyan v. Armenia,

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

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

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 13 March 2018,

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

PROCEDURE

1. The case originated in an application (no. 21791/12) 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 American national, Mr Hrayr Aganikyan ("the applicant"), on 2 April 2012.

2. The applicant was represented by Mr A. Ghazaryan, a lawyer practising in Yerevan. 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.

3. On 16 November 2016 the complaint concerning the length of the proceedings was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Yerevan.

5. On 30 December 2004 an investigator decided to institute criminal proceedings in connection with alleged usury by the applicant, proscribed by Article 213 § 1 of the Criminal Code ("the CC").

6. On 10 January 2005 the Kentron and Nork-Marash District Court of Yerevan ordered a search of the applicant's apartment.

7. On 20 June 2005 the applicant was formally charged under Article 213 § 2 (1) and (2) of the CC with performing usury as a profession which resulted in dire financial consequences for the injured parties. On the

same day the investigator decided, as a preventive measure, to have the applicant give a written undertaking not to leave his place of residence.

8. On 23 June 2005 the investigator decided to confiscate for security the applicant's property.

9. On 10 August 2005 the investigator sent the bill of indictment to the Kentron and Nork-Marash district prosecutor ("the prosecutor") for approval but on 15 August 2005 the prosecutor refused to approve it and returned the case to the investigator for further investigation.

10. On 15 October 2005 the investigator initiated another set of criminal proceedings, under Article 178 § 2 (2) of the CC, concerning the acquisition of property rights through fraud by the applicant. On the same day this case was merged with the case on usury.

11. On 8 and 29 December 2005 respectively the investigator ordered forensic handwriting examinations to be conducted. The results of these examinations were received on 13 and 20 January 2006 respectively.

12. On 7 March 2006 the investigator decided to amend the applicant's charges and to bring new charges against him under Article 178 §§ 2 (2) and 3 (1), Article 182 § 3 (2), Article 213 § 2 (1) and (2), and Article 349 § 1 of the CC on account of fraud in large and particularly large amounts, extortion in particularly large amounts, usury performed as a profession which resulted in dire financial consequences for the injured parties, and forgery of evidence.

13. On the same date the investigator lodged an application with the Kentron and Nork-Marash District Court of Yerevan, seeking to have the applicant detained for a period of two months, which was rejected by the District Court. However, upon an appeal by the prosecutor, on 28 March 2006 the Court of Appeal overturned the District Court's decision and ordered the applicant's detention for a period of two months.

14. On 29 and 30 March and 13 April 2006 the investigator lodged applications with the District Court for a search warrant and to confiscate information covered by bank secrecy. These applications were granted on 29 and 31 March and 13 April 2006.

15. On 14 July 2006 the supervising prosecutor approved the bill of indictment and the case was sent to the District Court, which took it over on 24 July 2006.

16. By the District Court's decision of 18 August 2006 the case was set for trial. Between 25 August 2006 and 11 October 2007, the court held twelve hearings which were adjourned because of the absence of victims and/or witnesses. In addition, on ten occasions the hearings were adjourned because of applications by the prosecutor or on the court's own motion, and on nine occasions because the applicant's applications were granted. On three occasions the court decided to have the absent witnesses and/or victims brought by force to the hearing.

17. On 9 July 2007 the District Court granted an application by the applicant's counsel to have him released on bail.

18. On 15 October 2007 the powers of the judge in charge of the applicant's case were suspended. On 1 November 2007 another judge took over the case and the examination of the case started anew.

19. Between 21 November 2007 and 23 December 2010, the court held forty hearings which were adjourned because of the absence of the applicant or his lawyer or because of applications lodged by them. In addition, on thirty-five occasions the hearings were adjourned because of the absence of the victims or witnesses or because of applications lodged by them, and on thirty-two occasions because the prosecutor's applications had been granted or because the court had decided to adjourn the case of its own motion. On five occasions the court decided to have the absent witnesses and victims brought by force to the hearing.

20. On 28 August 2009 and 12 October 2010 respectively the prosecutor decided to amend the charges and/or to bring new charges against the applicant.

21. In March and June 2010 the District Court partially granted or refused applications, introduced by the applicant and one of the victims, requesting that it order a forensic examination.

22. On 31 January 2011 the District Court gave judgement, finding the applicant guilty of five counts of the offences set out in Article 178 § 3 (1) (fraud), Article 182 § 3 (2) (extortion), Article 213 § 2 (1) and (2) (usury), and Article 349 § 1 (forgery of evidence) of the CC and sentenced him to nine years' imprisonment, confiscated half of his property and imposed a fine of 400,000 Armenian drams (AMD). It appears that during the proceedings the District Court examined forty-seven witnesses, about thirty pieces of documentary evidence and five expert opinions, one of which was ordered by the District Court.

23. The applicant and the prosecutor appealed against this judgment.

24. On 3 October 2011 the Criminal Court of Appeal rejected the appeals and upheld the District Court's judgment.

25. The applicant's counsel lodged an appeal on points of law.

26. On 21 November 2011 the Court of Cassation declared the appeal inadmissible for lack of merit.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant complained that the length of the criminal proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by a ... tribunal ..."

28. The Government contested that argument.

A. Admissibility

29. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

30. The period to be taken into consideration began on 30 December 2004 when the investigator instituted criminal proceedings against the applicant and ended on 21 November 2011 when the Court of Cassation delivered the final decision in the case. It thus lasted almost six years and eleven months at three levels of jurisdiction.

31. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

32. The Government argued that the case had been complex due to the nature of the charges as well as the number of victims and witnesses heard: there had been eight victims and thirty-four individuals had been questioned as witnesses both during the pre-trial investigation and the trial. The participation of many victims and witnesses at the trial had been possible only after the use of coercive measures ordered by the District Court. Moreover, the investigation of the matter had required several forensic examinations and the volume of the evidence collected had been extensive.

33. The Government noted that the pre-trial investigation phase had lasted some eighteen months and that it had not contained any periods of inactivity. The modification of charges during the pre-trial investigation and the trial had not generated any delay. Although the time-limits for the

investigation had been prolonged five times, this had been necessitated by the need, *inter alia*, to conduct forensic examinations, to find the property belonging to the applicant, to interrogate all victims and witnesses, and to carry out enquiries and searches. As to the trial, the District Court phase had taken about four and a half years during which time 136 court hearings had taken place and had been finally adjourned. The District Court had generally granted the different applications of the parties, which naturally had prolonged the proceedings. Both the applicant and his lawyer had been absent from four hearings; on thirteen occasions the applicant's lawyer had been absent and the case had been therefore adjourned; and once the case had been adjourned in order to involve another lawyer in the proceedings.

34. The applicant argued that all the applications lodged by him had been done in good faith and that half of them had related to guaranteeing his right to a fair trial. In contrast, the prosecutor had failed to appear in court on a number of occasions without any good reason and the presiding judge had also adjourned the case many times for reasons unconnected to this case. Almost a half of the 136 adjournments had been due to the repeated non-appearance of victims and witnesses, most of which had been called by the prosecutor. Securing their appearance had clearly been the responsibility of the State. Moreover, the trial had to be restarted from the beginning after one year and three months since the powers of the first presiding judge had been suspended. Also the modifications of the charges had had the same delaying effect.

35. The Court notes that, in the present case, the pre-trial investigation phase as well as the appeal phase was concluded quite rapidly but the District Court phase took about four and a half years. Although the District Court phase did not contain any particularly long periods of inactivity on the authorities' side, the problem was that the case was adjourned 136 times, the proceedings were restarted from the beginning after one year and three months of the trial, and the charges were amended or new ones were brought at that stage of proceedings. Although some of these elements may have been beyond the District Court's control, it was nevertheless in its power to decide whether or not to accept the applications for adjournment lodged by both parties and to properly secure the appearance of all parties. It is for the Contracting States to organise their judicial systems in such a way that the courts can meet the "reasonable time" requirement under Article 6 (see, for instance, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 142, ECHR 2016 (extracts)).

36. Moreover, even though the case was of some complexity due to its extensive volume and the number of victims and witnesses involved, it cannot be said that this in itself justified the entire length of the proceedings.

37. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

38. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

39. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

42. The Government considered that the amount claimed was excessive and that it should be reduced.

43. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 865 under that head.

B. Costs and expenses

44. The applicant also claimed 720,000 Armenian drams (AMD – approximately EUR 1,259) for the costs and expenses incurred before the Court.

45. The Government observed that the submitted contract did not provide any information on the hours worked or the hourly rate, and that there was no proof that the amount of AMD 720,000 had in fact been paid. Therefore no costs and expenses had actually been incurred in the present case. The Government thus considered that the claim for costs and expenses should be rejected.

46. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses for lack of itemisation.

C. Default interest

47. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      EUR 865 (eight hundred and sixty-five euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Aleš Pejchal
Deputy Registrar	President