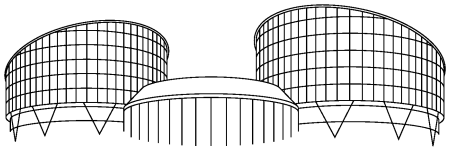

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF AVAKEMYAN v. ARMENIA

*(Application no. 39563/09)*

JUDGMENT

STRASBOURG

30 March 2017

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

**In the case of Avakemyan v. Armenia,**

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

Ledi Bianku, *President,*
Aleš Pejchal,
Armen Harutyunyan, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 7 March 2017,

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

# PROCEDURE

1. The case originated in an application (no. 39563/09) 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 Iranian national, Mr Avanes Avakemyan ("the applicant"), on 11 July 2009.

2. The applicant was represented by Mr H. Alumyan, 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. The applicant alleged, in particular, that the authorities had failed to enforce final judgments in his favour.

4. On 17 November 2011 the application was communicated to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Yerevan.

### A. First set of proceedings

6. On an unspecified date the applicant brought a claim in the Arabkir and Kanaker-Zeytun District Court of Yerevan against K., a private individual, seeking payment of a certain amount of money. It appears that before the beginning of the court's examination of the case the applicant and K. concluded an agreement to settle the debt, which envisaged, *inter alia*, a time-frame for payment.

7. On 3 May 2005 the District Court delivered a judgment upholding the settlement. It also stated that bailiffs would enforce the judgment if it was not complied with. No appeal was lodged and the judgment became final.

8. As K. did not comply with the terms of the settlement, the District Court issued a writ of execution and on 13 June 2005 a bailiff instituted enforcement proceedings. According to the applicant, the bailiff found no funds or property belonging to K. during the enforcement procedure.

9. By a letter of 7 June 2007 the bailiff informed the applicant that he had found out during the enforcement proceedings that K. had inherited a house but had not registered her ownership of it. The bailiff advised the applicant to institute proceedings against K. in order to have her ownership of the house recognised.

### B. Second set of proceedings

10. It appears that later in 2007 the applicant brought a claim in the Arabkir and Kanaker-Zeytun District Court to have K.'s ownership of the house recognised.

11. On 24 October 2007 the District Court, relying on Article 1225 § 5 of the Civil Code, granted the applicant's claim and recognised K. as the owner of the house in question. There was no appeal and the judgment became final.

12. On 19 November 2007 the bailiff, acting on a writ of execution issued by the District Court, instituted proceedings to enforce the judgment of 24 October 2007.

13. On 22 November 2007 the bailiff requested that the State Committee of the Real Estate Registry recognise K.'s ownership of the house, register it and issue a copy of the ownership certificate.

14. In reply, the Real Estate Registry on 4 December 2007 informed the bailiff that in order to register K.'s rights to the house it needed an application from K., the original of the District Court's judgment of 24 October 2007 and receipts for the State fee and other related payments. It also mentioned that K. was unlawfully occupying a plot of land whose status was unclear.

15. On 8 February, 4 July and 4 August 2008 respectively, the bailiff made similar requests to the Real Estate Registry in which he stated, with reference to section 22 of the Law on the State Registration of Property Rights, that an application from K. was not required. He also stated that the issue of registration-related payments would be decided upon initiation of the registration process and that receipts would be submitted.

### C. Third set of proceedings

16. In 2008 the applicant brought a claim in the Administrative Court against the Real Estate Registry and the bailiff, seeking to oblige them respectively to register K.'s ownership of the house and to confiscate it from her.

17. On 1 December 2008 the Administrative Court granted the applicant's claim by ordering the Real Estate Registry to register K.'s rights to the house and the bailiff to confiscate it from her. In particular, the Administrative Court found that both the refusal of the Real Estate Registry to register K.'s ownership rights and the non-enforcement by the bailiff of the judgment of 3 May 2005 owing to a lack of funds on the part of K. had been groundless as K.'s ownership of the house had been recognised by the final court judgment of 24 October 2007. It appears that no appeal was lodged against the Administrative Court's judgment and it became final.

18. According to the applicant, none of the three court judgments was enforced.

### D. Subsequent proceedings

19. On 18 February 2010 the applicant sought the payment of interest by K. via a claim in the District Court. On 1 March 2011 the District Court accepted his claim and ordered K. to pay him 17,727 US dollars (USD), to be converted into Armenian drams. The judgment became final on 1 April 2011. The applicant sought enforcement of the judgment on 2 April 2012 but was refused by the bailiff since he had failed to act within the time-limit of one year starting from the final judgment. That term had expired on 1 April 2012. Moreover, the applicant had also failed to submit a power of attorney to the bailiff.

20. On 10 February 2012 K. submitted a receipt for the payment of the debt to the bailiff and he terminated the enforcement proceedings on 13 February 2012.

## II. RELEVANT DOMESTIC LAW

### A. Law on Enforcement of Judicial Acts

21. Section 34(1) of the Law on the Enforcement of Judicial Acts prescribes a general term of two months for the fulfilment of enforcement acts by a bailiff.

### B. Civil Code of Armenia

22. Article 1225 § 1 of the Civil Code provides that an heir must accept an inheritance in order to acquire it. Article 1225 § 5 of the Code states that an accepted inheritance is considered as belonging to the heir from the opening of the inheritance procedure, irrespective of whether the heir's right to that property has been registered by the State, in cases where such a right is liable to registration.

23. Article 1188 states that the inheritance procedure opens on the day someone dies.

### C. Law on State Registration of Rights to Property

24. Section 22 provides that changes to immovable property rights cannot be made without the consent of the owner unless such a change has been ordered by a court decision, judgment or verdict.

## THE LAW

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

25. The applicant complained about the failure of the Armenian authorities to enforce final judgments in his favour rendered in three sets of proceedings. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, 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."

26. The Government contested that argument.

## A. Admissibility

27. The Court notes that this complaint 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

### *1. The parties' submissions*

#### (a) The applicant

28. The applicant submitted that he and his representative had been completely unaware of the fact that the debt had been paid. If it had been paid, the Government had omitted to explain why the applicant had not received any payment and how such non-payment could constitute enforcement of a judgment. The enforcement proceedings had been suspended until 13 February 2012, meaning that the judgment had thus only been "enforced" after seven years of non-enforcement when the case had been communicated to the Government by the Court.

#### (b) The Government

29. The Government noted that the applicant had failed to comply with the time-limit of one year from the final judgment to seek to enforce the judgment of 1 March 2011. However, Armenian legislation provided for a possibility to have an expired time-limit restored but the applicant had not used that remedy. The Government argued that the domestic authorities had used all the means at their disposal to inform the applicant about the payment of the debt. Two notifications about the terminated enforcement proceedings had been sent to the applicant's permanent address in Yerevan. Subsequently, the bailiff had tried to reach the applicant with the help of the police. The Government also pointed out that K.'s debt to the applicant (USD 32,500) had not been the only one at issue as the applicant had also owed money to K. (USD 57,500). When K. had paid the applicant, the bailiff set off what the applicant owed her from that amount. In those circumstances, the Government maintained that the conditions for the application of Article 37 § 1 (b) of the Convention had been met as the District Court judgment of 3 May 2005 had been enforced. The matter could therefore be considered as resolved.

### *2. The Court's assessment*

30. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In that way it 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. However, that right 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. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. To construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any 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, and *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III).

31. Turning to the circumstances of the present case, the Court observes that by a final judgment of 3 May 2005 the District Court confirmed a settlement whereby K. agreed to pay a debt to the applicant. The judgment was subject to recognition and execution by the Armenian authorities. As K. did not comply with the terms of the agreement, the District Court issued a writ of execution and on 13 June 2005 the bailiff instituted enforcement proceedings. As the bailiff could find no other funds or property belonging to K., apart from a house she had inherited, the applicant instituted new proceedings against K. in order to have her ownership of the house legally recognised. On 24 October 2007 the District Court granted the applicant's claim and established K.'s ownership of the house in question. Finally, in 2008 the applicant lodged a claim with the Administrative Court against the Real Estate Registry and the bailiff to oblige the former to register K.'s ownership of the house and the latter to confiscate that house from her. On 1 December 2008 the Administrative Court accepted the applicant's claim in a final judgment.

32. Under domestic legislation, a bailiff has, in general, a time-limit of two months to carry out enforcement activities (see paragraph 21 above). When, in the present case, the judgment of 3 May 2005 was not voluntarily complied with by K., enforcement proceedings were instituted on 13 June 2005. The time-limit of two months meant the enforcement proceedings should have expired in mid-August 2005. However, the bailiff could not find any funds or property belonging to K. during his enforcement activities, except for the house she had inherited.

33. Subsequently, the issue of K.'s ownership of the house was solved by the final judgment of 24 October 2007. The Administrative Court found in particular in its judgment of 1 December 2008 that both the refusal of the Real Estate Registry to register K.'s ownership and the non-enforcement by the bailiff of the judgment of 3 May 2005 by reason of K.'s lack of funds had been ungrounded as K.'s ownership of the house had already been

recognised by a final court judgment of 24 October 2007. It must therefore be considered that, according to the Administrative Court, no obstacles to the enforcement of the judgment of 3 May 2005 existed after the judgment of 24 October 2007.

34. The parties agree that the judgments of 3 May 2005, 24 October 2007 and 1 December 2008 remained unenforced until 10 February 2012 when K. submitted a receipt for payment of the debt to the bailiff, who then on 13 February 2012 terminated the enforcement proceedings. Moreover, the Court notes that the enforcement proceedings were terminated only after the application had been communicated to the Government on 17 November 2011.

35. Consequently, the judgments of 3 May 2005, 24 October 2007 and 1 December 2008, which all were favourable to the applicant, remained unenforced from 24 October 2007 until 13 February 2012. The non-enforcement of those domestic judgments therefore lasted for some four years and three months. The Government have failed to advance any argument to justify that delay. The Court therefore finds that the Armenian authorities, by failing for several years to take the necessary measures to comply with the final judgments, deprived the provisions of Article 6 § 1 of all useful effect in the present case and that, due to the fact that his claim remained unpaid for an unreasonably long time, they failed to respect his rights under Article 1 of Protocol No. 1 to the Convention (see *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 56-57, 15 October 2009; and *Memishaj v. Albania*, no. 40430/08, § 33, 25 March 2014).

36. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant complained under Article 13 of the Convention that he had had no effective domestic remedy for the non-enforcement of the final judgments in his favour because the bailiff and the State Real Estate Registry had not taken any action to enforce the judgment of 3 May 2005.

38. Article 13 of the Convention reads as follows:

> "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."

39. The Government contested that allegation.

### A. Admissibility

40. The Court notes that this complaint 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

### *1. The parties' submissions*

41. The applicant did not specifically comment on the alleged lack of an effective remedy.

42. The Government maintained that the applicant had had an effective remedy as the judgment of 3 May 2005 had been enforced and the debt had been paid. Moreover, the applicant had had an effective remedy in being able to seek and gain payment of the interest on the debt but he had failed to observe the procedural requirements of national law as far as enforcement was concerned. Armenian legislation provided for the possibility to renew an expired time-limit but the applicant had not used that possibility.

### *2. The Court's assessment*

43. The Court reiterates that Article 13 of the Convention gives direct expression to the States' obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own legal system. It therefore requires that the States provide a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Yuriy Nikolayevich Ivanov v. Ukraine*, cited above, § 63; and *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

44. The scope of the Contracting States' obligations under Article 13 of the Convention varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of this provision does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred. Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Yuriy Nikolayevich Ivanov v. Ukraine*, cited above, § 64; *Kudła*, cited above, §§ 157-158; and *Wasserman v. Russia (no. 2)*, no. 21071/05, § 45, 10 April 2008).

45. The Court notes that the Government have failed to show that the domestic legislation offers a creditor such as the applicant the possibility to challenge delays in enforcement proceedings. Nor have they shown that it was possible to lodge a compensation claim for a delay in enforcement. The fact that the applicant was able to obtain an enforceable judgment on the payment of interest in his favour does not constitute an effective remedy for

the delay in enforcement since that delay was attributable to the domestic authorities rather than to K.

46. The Court therefore concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to accelerate the enforcement proceedings or to obtain redress for any damage created by the delay in those proceedings. Accordingly, there has also been a violation of Article 13 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 25,000 euros (EUR) in respect of pecuniary damage and EUR 5,000 in respect of non-pecuniary damage.

49. The Government argued that the applicant's claim for pecuniary damages should be rejected as it was the same amount as the debt which had already been paid to the applicant. The Government submitted that the claim for non-pecuniary damages should also be rejected as the applicant had already received redress at the national level. If the Court found otherwise, the Government argued that the claim for non-pecuniary damages was unreasonable when compared with the period of non-execution of six years and nine months.

50. The Court agrees with the Government that there is no longer any outstanding debt as it has already been paid to the applicant and therefore rejects the applicant's claim in respect of pecuniary damage. On the other hand, it finds that the applicant has suffered a certain amount of non-pecuniary damage as a result of the violations found. 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

51. The applicant did not claim any costs and expenses. The Court therefore makes no award under that head.

### C. Default interest

52. 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 and Article 1 of Protocol No. 1 to the Convention;

3. *Hold* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      EUR 3,600 (three thousand six hundred 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;

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

Done in English, and notified in writing on 30 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Renata Degener | Ledi Bianku |
| Deputy Registrar | President |