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

FIRST SECTION

DECISION

Application no. 603/10
Katya KHLGHATYAN
against Armenia

The European Court of Human Rights (First Section), sitting on 17 October 2017 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 16 December 2009,

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 Katya Khlghatyan, is an Armenian national who was born in 1949 and lives in Ararat. She was represented before the Court by Ms Monika Hakobyan, 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. Until 1989 the applicant and her family lived in a flat in the city of Ararat, Armenia, having the right to use it as accommodation.

5. It appears that in 1989 the executive committee of the Ararat City Council took a decision to demolish the building in which the applicant's flat was situated with the intention of constructing a new building on the same site.

6. On 26 June 1989 the Executive Committee concluded an agreement with the applicant's husband on the allocation of a flat to his family in the new building to be constructed; the size of that flat reflected with the number of his family members.

7. On 29 August 1996 the Executive Committee allowed an application lodged by the applicant's husband for the latter's family to be allowed temporarily to occupy a one-room living space (hereinafter referred to as "the communal flat") in a communal building until the flat in the planned new building had been handed over. In 1997, after the death of the applicant's husband, she was registered as the user of the communal flat.

8. On 25 March, 5 May and 22 May 2008 respectively the applicant lodged applications to the mayor of Ararat seeking to have the communal flat sold to her.

9. On 14 April and 27 May 2008 respectively the mayor replied to the applicant, informing her that it was impossible to sell it to her since part of the communal flat had already in 2004 been sold to another person, F.M., and the latter had already obtained a certificate of ownership rights.

10. On 8 July 2008 the applicant brought a claim against the Municipality of Ararat, F.M. and the State Real Estate Registry (as a third party), asking the court to declare partially invalid the sale contract in respect of the communal flat or to oblige the Municipality of Ararat under the agreement concluded with her husband to allocate the tenancy of a new flat to her.

11. On 12 February 2009 the Southern Civil Court (*Հարավային քաղաքացիական դատարան*) partially allowed the applicant's claim, obliging the Municipality to provide her with the flat prescribed by the agreement of 26 June 1989. The remainder of her action was dismissed as unsubstantiated.

12. The applicant appealed against this judgment. No appeal was lodged by the Municipality of Ararat.

13. On 22 May 2009 the Civil Court of Appeal dismissed the applicant's appeal and upheld the judgment.

14. The applicant lodged an appeal on points of law.

15. On 22 July 2009 the Court of Cassation declared her appeal on points of law inadmissible for lack of merit.

16. Meanwhile, on 18 June 2009, the applicant wrote to the mayor of Ararat, asking to be provided with a flat, as prescribed by the judgment of 12 February 2009. On 18 June 2009, in reply to this letter, the mayor informed her that no construction was being carried out and that no flats were available at that time. The mayor also informed her that her family

would be allocated a flat in the new building to be constructed in the place of the demolished one.

17. It appears that thereafter the applicant regularly applied to the Municipality and other state authorities, such as the President of Armenia and the Minister for Urban Development, asking about the construction of the new building and asking for her housing problem to be resolved, but to no avail.

18. On 19 July 2010 the applicant bought the remainder of the communal flat at auction for 310,914 Armenian drams (AMD, approximately 650 euros (EUR) at that time).

19. The applicant alleges that the judgment of 12 February 2009 was never enforced. The Government states that the applicant never presented a writ of execution to the Bailiff Service for the Compulsory Enforcement of Judicial Acts (hereinafter "the Bailiff Service"), and that neither did she ever apply for such a writ to be issued.

B. Relevant domestic law

The Law on Compulsory Enforcement of Judicial Acts (in force from 1 January 1999)

20. Under section 4 of the Law, the basis for applying compulsory enforcement measures shall be a writ of execution issued in accordance with the procedure prescribed by the Law. Section 18 of the Law provides that a writ of execution shall be issued by a first-instance court on the basis of an application lodged by the claimant in question or his expressly authorised representative.

21. Under section 23 of the Law, a writ of execution may be presented for enforcement within one year of the day on which the relevant judicial act became final. Writs of execution in respect of claims that have not been satisfied because of a lack or insufficiency of property shall remain effective until their enforcement.

22. Section 71 of the Law provides that decisions taken by bailiffs acting within the scope of their duties shall be binding on all state bodies, local-government bodies, officials, organisations and citizens and shall be subject to execution throughout the whole territory of the Republic of Armenia.

COMPLAINT

23. The applicant complained under Article 1 of Protocol No. 1 to the Convention about the failure to enforce the final and binding judgment of 12 February 2009 in her favour.

THE LAW

24. The applicant complained that the failure to enforce the final judgment in her favour had violated Article 1 of Protocol No. 1 to the Convention. The Court also decided, *ex officio*, to communicate the application under Article 6 § 1 of the Convention.

A. The Government's preliminary objection

25. The Government raised a preliminary objection that the applicant had not exhausted effective remedies available to her. She had never presented a writ of execution to the Bailiff Service for compulsory enforcement of the Southern Civil Court judgment of 12 February 2009. According to the Government, the Bailiff Service could have obliged the Municipality of Ararat to provide the applicant with a flat or equivalent compensation. There were numerous examples of the effectiveness of this remedy where enforcement had been based on a writ of execution in favour of a private individual or a company issued against a local-government body. The domestic law had thus provided the applicant with a practical and effective remedy in respect of the enforcement of the final judicial act in her favour. Since she had failed to initiate execution proceedings by presenting a writ of execution to the Bailiff Service, the application had to be declared inadmissible under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. The applicant

26. The applicant claimed that even if she had obtained a writ of execution and presented it to the Bailiff's Service, it would not have been executed because of a lack of State funds. The applicant had requested on numerous occasions the execution of the judgment by the local-government and government bodies, which had refused to execute it because of a lack of State funds. She had been informed that the construction of the new building was included in the capital expenditure plan for the 2017-2019 State budget. The applicant did not therefore have an effective remedy at her disposal.

C. The Court's assessment

27. Article 35 § 1 reads as follows:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

28. The Court reiterates that the purpose of the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention is to afford the Contracting States the opportunity to prevent or put right violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. Thus, the complaint intended to be made subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements and time-limits laid down in domestic law (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, with further references).

29. The remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, for example, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV).

30. The Court notes that the Government argued that the applicant did not obtain a writ of execution and present it to the Bailiff's Service. Had the applicant done so, the Bailiff Service could have obliged the Municipality of Ararat to provide the applicant with a flat or equivalent compensation. She thus failed to exhaust the effective domestic remedies available to her. The applicant did not deny the fact that no writ of execution was obtained and presented to the Bailiff's Service but claimed instead that this did not constitute an effective remedy. She furthermore stated that execution would not have taken place in any event because of the lack of State funds (see paragraphs 25-26 above).

31. The Court notes that, under section 4 of the Law on Compulsory Enforcement of Judicial Acts, the basis for applying compulsory enforcement measures is a writ of execution issued in accordance with the procedure prescribed by that Law. Section 23 of the same Law provides that a writ of execution may be presented for enforcement within one year of the day on which the judicial act in question became final (see paragraphs 20-21 above). As can be seen from the case file, no proceedings before the Bailiff were ever instituted by the applicant.

32. As to the effectiveness of the execution by the Bailiff's Service, there are no reasons for the Court to conclude that the remedy in question was ineffective. In fact, the Government have provided several examples of the effectiveness of this remedy in cases where enforcement has been based on a writ of execution in favour of a private individual or a company issued against a local-government body. Moreover, the domestic law provides that decisions taken by compulsory enforcement officers within the scope of their duties is binding on local-government bodies (see paragraph 22 above). Furthermore, the effectiveness of this very remedy has not been put into question in previous non-execution cases against Armenia before the Court (see, for example, *Avakemyan v. Armenia*, no. 39563/09, 30 March 2017; *Nikoghosyan v. Armenia*, no. 75651/11, 18 May 2017; and *Dngikyan v. Armenia*, no. 66328/12, 15 June 2017). The existence of mere doubts as to the prospects of success of a particular domestic remedy, which is not obviously futile, is not a valid reason for failing to exhaust it (see *A.B. v. the Netherlands*, no. 37328/97, § 72, 29 January 2002). In the present case, there are thus no grounds which could have allowed the applicant to dispense with initiating the execution procedure before the Bailiff's Service, thus drawing its attention to the issue at stake – which she intended to raise subsequently, if need be, before the institutions responsible for European supervision (see *Ahmet Sadık v. Greece*, 15 November 1996, § 33, *Reports* 1996-V).

33. It follows that the Government's objection must be upheld and the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 November 2017.

Renata Degener	Aleš Pejchal
Deputy Registrar	President