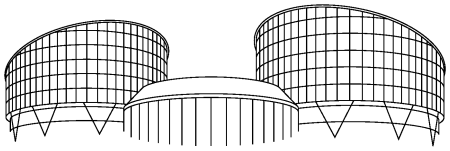

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 325/10
Vardan NALBANDYAN and Nelli DANIELYAN
against Armenia

The European Court of Human Rights (First Section), sitting on 20 February 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 14 December 2009,

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, Mr Vardan Nalbandyan and Ms Nelli Danielyan, are Armenian nationals who were born in 1949 and 1987 respectively and live in Yerevan. They were represented before the Court by Mr N. Baghdasaryan, 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.

The circumstances of the case

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

4. Mr Vardan Nalbandyan ("the first applicant") is the brother of Ms Nelli Danielyan's ("the second applicant") late mother A.N.

5. The first applicant and A.N. jointly owned a house measuring 45.5 square metres. That house was situated on a plot of land measuring 0.14323 hectares that was jointly owned by the first applicant and the State (the State apparently owned twelve-thirteenths of the said plot of land). The house and the plot of land were located at the address 68 Arami Street, Yerevan. After A.N.'s death both of the applicants inherited her share in the house in equal parts.

1. The first set of proceedings and the failure to register the first applicant's ownership rights over a plot of land

6. On 7 April 2004 the Kentron and Nork-Marash District Court of Yerevan allowed a claim lodged by the first applicant against the Kentron division of the State Real Estate Registry (hereinafter "the SRER") and – as a third party – the municipality of Yerevan. In allowing the claim the District Court acknowledged the first applicant's ownership rights over (i) an unauthorised construction measuring 21.8 square metres that stood adjacent to the house, and (ii) an additional plot of land measuring 18.7 square metres, together with an auxiliary building (also measuring 18.7 square metres) constructed on it – all which were also located at 68 Arami Street, Yerevan. The District Court also obliged the Kentron division of the SRER to register the first applicant's ownership rights over the aforementioned property.

7. On 31 May 2004 the Civil Court of Appeal, after an appeal by the mayor of Yerevan, upheld the District Court's judgment.

8. On 23 July 2004 the Court of Cassation in the final instance dismissed an appeal on points of law by the mayor of Yerevan as unsubstantiated and upheld the Court of Appeal's judgment of 31 May 2004. On that date the latter judgment became enforceable.

9. On 27 August 2004 the Yerevan division of the Department for the Enforcement of Judicial Acts (hereinafter "the DEJA") instituted enforcement proceedings under a writ of execution issued by the Court of Appeal.

10. On 18 February 2005, in the course of the enforcement proceedings, the SRER issued an ownership rights registration certificate (*անշարժ գույքի սեփականության իրավունքի գրանցման վկայական*) in respect of the address 68 Arami Street. This certificate confirmed the registration, *inter alia*, of the first applicant's title over the 21.8-square-metre unauthorised construction and the 18.7-square-metre auxiliary construction.

11. On 15 July 2005 the bailiff decided to terminate the enforcement proceedings on the grounds of his having implemented the measures specified in the writ of execution.

12. The first applicant brought a claim against the DEJA, contesting the bailiff's decision of 15 July 2005 on the grounds that the writ of execution

had not been fully enforced given the fact that the Kentron division of the SRER had failed to register his title over the 18.7-square-metre plot of land.

13. On 31 January 2006 the Ajapnyak and Davtashen District Court of Yerevan allowed his claim. No appeal was lodged against this judgment, which thus became final.

14. On 9 March 2006 the DEJA resumed the enforcement proceedings.

15. The first applicant alleges that his ownership rights over the 18.7 square-metre plot of land were never registered and that the Civil Court of Appeal's judgment of 31 May 2004 was never fully enforced.

2. The second set of proceedings and the failure to register A.N.'s ownership rights over the jointly-owned plot of land

16. On 1 June 2005 A.N. died. She had made a will under which she bequeathed all her property, including "her part in the house and the plot of land", to the first applicant.

17. On 16 August 2005 the first applicant brought a claim before the Kentron and Nork-Marash District Court of Yerevan, seeking to assert A.N.'s property rights as a co-owner in respect of the jointly-owned plot of land located at 68 Arami Street, Yerevan.

18. On 30 September 2005 the District Court allowed the claim. It also confirmed that A.N.'s co-ownership rights in respect of the jointly owned land were subject to State registrations. No appeal was lodged against this judgment and it became enforceable fifteen days after its delivery.

19. On 24 October 2005 the Yerevan Division of the DEJA instituted enforcement proceedings under a writ of execution issued by the District Court.

20. On 22 December 2005 the first applicant, as A.N.'s heir under her will, obtained an inheritance certificate (*ժառանգական իրավունքի վկայագիր*) in respect of A.N.'s property confirming that he owned one quarter of the house situated at 68 Arami Street, Yerevan. On the same day a similar certificate confirmed that the second applicant was also an heir of A.N. It appears that A.N.'s property was equally divided between the first and the second applicant.

21. On 20 January 2006 the Kentron division of the SRER issued an ownership certificate, which registered the applicants' ownership rights as established by the ownership certificates. In particular, the certificate provided that both applicants owned the house at 68 Arami Street – specifically, the 18.7-square-metre living space and the 21.8-square-metre auxiliary construction were owned only by the first applicant and the whole plot of land measuring 0.14323 hectares was jointly owned by the first applicant and the State. The certificate did not specify the ownership rights determined by the District Court's judgment of 30 September 2005 in respect of the jointly-owned plot of land.

22. The applicants allege that A.N.'s co-ownership rights over the 0.14323-hectare plot of land were never registered and that, for that reason, they have been unable to inherit that property.

3. Expropriation of the applicants' property

23. On 6 August 2005 the first applicant and A.N. received an offer from the Yerevan Construction and Investment Project Implementation Agency, a non-commercial State organisation (hereafter "the Agency"). The Agency informed them that the house and the plot of land located at 68 Arami Street were required by the State and would be expropriated. It proposed that the first applicant and A.N. sign an agreement on the transfer of their ownership rights to the State in return for compensation. It appears that this offer was rejected.

24. On 20 February 2006, after the death of A.N., both of the applicants, as A.N.'s heirs, again received the same offer. It appears that the applicants declined also this offer.

25. On 7 March 2006 the Agency lodged a claim with the Kentron and Nork-Marash District Court of Yerevan against the applicants, seeking to (i) oblige them to sign an agreement on the expropriation of their property for State needs, and (ii) to have them and their family members evicted.

26. On 28 March 2006 the applicants concluded an agreement with the Agency on the taking of the property for State needs in return for compensation. As stipulated in the agreement, the property to be transferred consisted of a house measuring 18.7 square metres, an auxiliary construction measuring 21.8 square metres, one-thirteenth of a 0.14323-hectare plot of land – owned solely by the first applicant – and a house measuring 45.5 square metres, jointly owned by both of the applicants. This agreement did not in any way refer to the applicants' property rights in respect of plots of land that were the subject to the above-mentioned enforceable judgments. It appears that, as a result, the proceedings in respect of the Agency's claim against the applicants were terminated.

27. On 24 October 2007 the Kentron division of SRER rejected an application by the first applicant (apparently for his ownership rights arising from the above-mentioned judgments to be registered) on the grounds that the property had been expropriated by the State, the constructions in question had already been demolished and the State was the current owner of the plot of land.

4. Proceedings initiated by the applicants after the expropriation of their property

28. On 9 July 2008 the applicants applied to the Civil Court of Yerevan, seeking to have declared null and void the agreement of 28 March 2006 on

the taking of the property for State needs in return for compensation concluded between the applicants and the Agency. The applicants claimed that the mentioned agreement had been concluded in violation of the provisions and requirements of the Constitution and the Convention.

29. On 10 October 2008 the Civil Court of Yerevan declined the applicants' claim, finding, *inter alia*, that the applicants had missed the one-year time-limit provided by law for applying to court. The Civil Court of Yerevan did not consider the merits of the case, stating that the application of statute of limitations was itself an autonomous ground for dismissal of the applicants' claim.

30. The applicants appealed against the above-mentioned judgment but their appeal was dismissed by the decision of the Court of Appeal on 12 February 2009. In dismissing the appeal, the Court of Appeal examined the merits of the case but came to the conclusion that the grounds for challenging the agreements in question were unsubstantiated and the legal acts referred to by the applicants were irrelevant.

31. The applicants lodged an appeal on points of law against the above-mentioned decision but it was declared inadmissible for lack of merit by the Court of Cassation on 17 June 2009.

COMPLAINT

32. The applicants complained that the non-enforcement of the Court of Appeal's judgment of 31 May 2004 in the first applicant's favour and the District Court's judgment of 30 September 2005 in A.N.'s favour violated their rights, as guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE LAW

33. The applicants complained that the non-enforcement of the domestic judgments in their favour violated their rights under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

A. The Government's preliminary objections

34. The Government argued that the applicants had failed to comply with the six-month time-limit when lodging their application with the Court. The decision of the Court of Cassation of 17 June 2009 should not be considered as the date of final decision since, by the fact that the applicants had concluded an agreement with the Agency on 28 March 2006, they had

voluntarily waived all their rights in respect of the property in question. According to this agreement, the applicants' property, namely, the house measuring 18.7 square metres, the auxiliary construction measuring 21.8 square metres, one-thirteenth of the 0.14323-hectare plot of land – owned solely by the first applicant – and the house measuring 45.5 square metres – jointly owned by both of the applicants – had been transferred to the State. The applicants had been aware of or should have been aware of, if not on 28 March 2006 then at least on 24 October 2007, that the enforcement of the final judgments in their favour had become impossible. Further proceedings before the domestic courts had therefore not been capable of providing them with any kind of redress. The applicants had entered into the agreement of their own free will and they had received 31,069,182 Armenian drams (AMD) (approximately 54,400 euros (EUR)) as compensation. Their application should therefore be rejected as being lodged out of time.

35. Moreover, the Government argued that the applicants had not exhausted the effective remedies available to them. The applicants had failed to raise the issue of arguable plots of land and the expropriation compensation in that respect before the national courts, although they had had an effective remedy to do so.

36. In conclusion, the Government maintained that the application should be declared inadmissible under Article 35 §§ 1 and 4 of the Convention for being lodged out of time and for the non-exhaustion of domestic remedies.

B. The applicants

37. The applicants did not comment on the Government's objections.

C. The Court's assessment

38. 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."

39. The Court considers that there is no need to examine the Government's objection concerning the alleged non-exhaustion of domestic remedies since the application is in any event inadmissible for being lodged out of time.

40. The object of the six-month time-limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both

individuals and State authorities the period beyond which such supervision is no longer possible (see, amongst other authorities, *Varnava and Others v Turkey* [GC], nos. 16064/90 and 8 others, § 156, ECHR 2009; and *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

41. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Varnava and Others*, cited above, § 157; and *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Nor can Article 35 § 1 be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001).

42. Nonetheless it has been said that the six-month time-limit does not apply as such to continuing situations (see, for example, see *Varnava and Others*, cited above, § 159; and *Cone v. Romania*, no. 35935/02, § 22, 24 June 2008). However, the passage of time has repercussions on the exercise of the rights at issue as well as on the Court's own examination of the case. Where alleged continuing violations of the right to property or home are at stake, the time may come when an applicant should introduce his or her case as remaining passive in the face of an unchanging situation would no longer be justified. Once an applicant has become aware or should be aware that there is no realistic hope of regaining access to his or her property and home in the foreseeable future, unexplained or excessive delay in lodging the application may lead to the application being rejected as out of time (see *Chiragov and Others v. Armenia* (dec.) [GC], no. 13216/05, § 141, 14 December 2011).

43. Turning to the present case, the Court notes that, on 31 May 2004, the Court of Appeal issued a judgment in the first applicant's favour concerning his ownership rights over the 18.7 square-metre plot of land and that on 30 September 2005 the District Court issued a judgment in A.N.'s favour concerning her rights over the 0.14323-hectare plot of land. Neither one of these plots of land were included in the agreement concluded between the applicants and the Agency on 28 March 2006 (see paragraph 26 above). Therefore, on the basis of the case file, it appears that these judgments remain still unenforced.

44. However, the non-enforced judgments were delivered already in 2004 and 2005 respectively. The Court agrees with the Government that the applicants became aware of or should have become aware of the non-enforcement of these judgments on 28 March 2006 when they concluded the agreement with the Agency and noticed that these plots of land were not a part of the agreement. The applicants have not in any way explained why they waited until 14 December 2009 to lodge their complaint with the Court. The Court therefore considers that their application has been lodged out of time.

45. 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 being lodged out of time.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 March 2018.

Renata Degener	Aleš Pejchal
Deputy Registrar	President