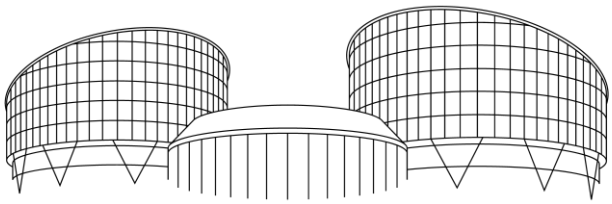

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 15371/07
by Beniamin NERSESYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 19 January 2010 as a Chamber composed of:

Josep Casadevall, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Luis López Guerra,
Ann Power, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 30 March 2007,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

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, Mr Beniamin Nersesyan, is a Canadian national who was born in 1954 and lives in Misissauga, Canada. He was represented before the Court by Ms A. Atoyan, a lawyer practising in Yerevan. The

respondent Government were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

A. The circumstances of the case

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

3. Since 1993 the applicant has been living in Canada.

4. On 2 August 2006 he instituted civil proceedings against his brother, seeking to have annulled a number of documents relating to his brother's acquisition of their deceased father's estate and to be recognised as one of the heirs. He alleged that his father, prior to his death in September 1998, had made a will which named him and his brother as heirs. The notary, when formalising the inheritance in March 1999 pursuant to the law, had failed to verify this circumstance before issuing his brother and mother with an inheritance certificate.

5. On 18 October 2006 the Kentron and Nork-Marash District Court of Yerevan (*Երևանի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) examined and dismissed the applicant's claim as unsubstantiated. The District Court found that the applicant had been aware of his father's death and was therefore aware that an inheritance procedure had been opened. In spite of this, he had missed the six month time-limit prescribed by law to claim the inheritance.

6. On an unspecified date the applicant lodged an appeal.

7. On 13 December 2006 the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) upheld the judgment of the District Court, reaching similar conclusions.

8. On 25 December 2006 the applicant lodged an appeal on points of law with the Court of Cassation (*ՀՀ վճռաբեկ դատարան*), claiming various substantive violations of the law. Pursuant to Article 231.2 § 1 of the Code of Civil Procedure ("the CCP"), he argued that these violations would have grave consequences, namely the loss of his property. He further argued that the decision to be adopted by the Court of Cassation would have a significant impact on the uniform application of the law, claiming that a person was not obliged to know about the existence of a will on the day of the testator's death. He finally argued that the judgment of the Court of Appeal contradicted a decision of the Court of Cassation adopted on 3 March 2005 in connection with another dispute. A copy of that decision was attached to the applicant's appeal.

9. On 15 January 2007 the Court of Cassation, sitting in camera as a panel of seven judges, decided to return the appeal, that is, to declare it inadmissible. The reasons provided were as follows:

"The Civil Chamber of the Court of Cassation ... having examined the question of admitting [the applicant's appeal lodged against the judgment of the Civil Court of Appeal of 13 December 2006], found that it must be returned with the following reasoning:

Pursuant to Article 230 § 1 (4.1) of [the CCP] an appeal on points of law must contain any of the grounds [required by] Article 231.2 § 1 of [the CCP].

The Court of Cassation finds that the admissibility grounds raised in the appeal on points of law[, as required by] Article 231.2 § 1 of [the CCP], are absent. In particular, the judicial act to be adopted by the Court of Cassation in this case cannot have a significant impact on the uniform application of the law. Furthermore, the Court of Cassation considers the arguments raised in the appeal on points of law concerning a possible judicial error and its consequences, in the circumstances of the case, to be unfounded."

B. Relevant domestic law

1. The Constitution of 1995 (following the amendments introduced on 27 November 2005 with effect from 6 December 2005)

10. The relevant provisions of the Constitution read as follows:

Article 18

"Everyone has the right to an effective remedy to have his rights and freedoms protected by the judicial and other public authorities.

Everyone has the right to defend his rights and freedoms by any means not prohibited by law. ..."

Article 19

"Everyone has the right to a public hearing of his case by an independent and impartial court within a reasonable time in conditions of equality and with respect for all fair trial requirements in order to have his violated rights restored, as well as the validity of the charge against him determined. ..."

Article 92

"...The highest judicial instance in Armenia, except matters falling within constitutional jurisdiction, is the Court of Cassation which is called upon to ensure the uniform application of the law. ..."

2. The Code of Civil Procedure (in force from 1 January 1999)

11. The relevant provisions of the CCP, as in force at the material time, read as follows:

Article 219: Entry into force of judgments of the Court of Appeal

"Judgments of the Court of Appeal enter into force from the moment of their delivery."

Article 222: Review of judicial acts through cassation proceedings

"1. Judgments of the first instance courts, the Commercial Court and the Court of Appeal which have entered into force ... can be reviewed through cassation proceedings based on the appeals brought by persons indicated in Article 223 of this Code."

Article 223: Persons entitled to bring appeals on points of law

"2. Appeals on points of law against judgments of lower courts which have entered into force can be brought by (1) the parties to the proceedings; [and] (2) persons who were not parties to the proceedings but whose rights and obligations were affected by the judicial act deciding on the merits of the case."

Article 224: The court that examines appeals on points of law and the objective of its activity

"1. Appeals on points of law lodged against judgments of the first instance courts, the Commercial Court and the Court of Appeal which have entered into force ... are examined by the Civil Chamber of the Court of Cassation (hereafter, Court of Cassation).

2. The objective of the Court of Cassation's activity is to ensure the uniform application of the law and its correct interpretation, and to promote the development of the law."

Article 225: **Grounds for lodging an appeal on points of law**

"An appeal on points of law can be lodged on the ground of ... a substantive or a procedural violation of the parties' rights..."

Article 228.1: **Time-limits for lodging an appeal on points of law**

"1. An appeal on points of law can be lodged within six months from the date of entry into force of the judicial act of a lower court deciding on the merits of the case."

Article 230: The c**ontent of an appeal on points of law**

"1. An appeal on points of law must contain (1) the name of the court to which the appeal is addressed; (2) the appellant's name; (3) the name of the court that has adopted the judgment, the case number, the date on which the judgment was adopted, the names of the parties, and the subject-matter of the dispute; (4) the appellant's claim, with reference to the laws and other legal acts and specifying which provisions of substantive or procedural law have been violated or wrongly applied ...; (4.1) arguments required by any of the subparagraphs of paragraph 1 of Article 231.2 of this Code; [and] (5) a list of documents enclosed with the appeal.

2. An appeal on points of law shall be signed by the appellant.

3. A document certifying payment of the State fee shall be attached to the appeal."

Article 231.1: **Returning an appeal on points of law**

"1. An appeal on points of law shall be returned if it does not comply with the requirements of Article 230 and paragraph 1 of Article 231.2 of this Code or if it has been lodged by a person whose rights have not been violated.

2. The Court of Cassation shall adopt a decision to return an appeal on points of law within ten days after the receipt of the appeal.

3. In its decision to return an appeal on points of law the Court of Cassation may fix a time-limit for correcting the shortcoming and lodging the appeal anew."

Article 231.2: Admit**ting an appeal on points of law**

"1. The Court of Cassation shall admit an appeal on points of law, if (1) the judicial act to be adopted on the given case by the Court of Cassation may have a significant impact on the uniform application of the law, or (2) the contested judicial act contradicts a judicial act previously adopted by the Court of Cassation, or (3) a violation of the procedural or the substantive law by the lower court may cause grave consequences, or (4) there are newly discovered circumstances.

2. The Court of Cassation sitting as a panel composed of the President of the Court of Cassation and the judges of the chamber shall decide whether appeals on points of law lodged with the Court of Cassation comply with the requirements of Article 230 of this Code and paragraph 1 of this article and should be admitted.

3. An appeal on points of law shall be admitted if at least three of the judges of the Court of Cassation vote in favour of admitting it. This decision of the Court of Cassation is not subject to appeal."

12. The above Articles 231.1 and 231.2 of the CCP were amended into Articles 233 and 234 by the Law of 28 November 2007 with effect from 1 January 2008, following the Constitutional Court's decision of 9 April 2007 (see paragraph 14 below), and read as follows:

Article 233: Returning an appeal on points of law

"... 2. The Civil and Administrative Chamber of the Court of Cassation shall adopt a decision to return an appeal on points of law within ten days after the receipt of the case file by the Court of Cassation. The decision to return an appeal on points of law must be reasoned, except for the cases in which an appeal on points of law is returned for the lack of the ground stipulated by Article 234 § 1 (1). ..."

Article 234: Admit**ting an appeal on points of law**

"1. The Court of Cassation shall admit an appeal on points of law if, in its opinion, the appeal substantiates that (1) the decision of the Court of Cassation concerning the question raised in the appeal may have a significant impact on the uniform application of the law, or (2) the contested judicial act *prima facie* contradicts a decision previously adopted by the Court of Cassation, or (3) a *prima facie* judicial error made by the lower court which may cause or have caused grave consequences. ..."

13. The new Article 233 § 2 of the CCP was further amended by the Law of 26 December 2008 with effect from 1 January 2009, following the Constitutional Court's decision of 8 October 2008 (see paragraph 15 below) and currently reads as follows:

"Article 233: Returning an appeal on points of law

"... 2. The Court of Cassation shall adopt a decision to return an appeal on points of law within one month after the receipt of the case file by the Court of Cassation. The decision to return an appeal on points of law must be reasoned. ..."

3. The Decision of the Constitutional Court of 9 April 2007 on the Conformity of Article 230 § 1, Article 231.1 and Article 231.2 of the Code of Civil Procedure with the Constitution, adopted on the basis of applications lodged by a number of individuals and legal persons

14. The Constitutional Court found paragraph 2 of Article 231.1 in its part concerning the lack of a requirement to provide reasons for a decision to return an appeal on points of law incompatible with, *inter alia*, Articles 18 and 19 of the Constitution, because it failed to ensure legal safeguards for an effective and accessible administration of justice. The remaining contested provisions were found to be compatible with the Constitution.

4. The Decision of the Constitutional Court of 8 October 2008 on the Conformity of, inter alia, Article 233 § 2 of the Code of Civil Procedure with the Constitution, adopted on the basis of applications lodged by a number of individuals

15. The Constitutional Court found paragraph 2 of Article 233 in its part reading "except for the cases in which an appeal on points of law is returned for the lack of the ground stipulated by Article 234 § 1 (1)" incompatible with Articles 18 and 19 of the Constitution. The Constitutional Court noted that the amendments introduced following its decision of 9 April 2007 did not sufficiently ensure the relevant legal guarantees. It found that the legislature, by including the exception in question, failed to ensure the implementation of the above-mentioned decision. The Constitutional Court explained that the requirement of a reasoned decision did not concern this or that particular admissibility ground of an appeal on points of law, but concerned all such grounds. This requirement aimed at ensuring the legitimate and lawful exercise of the court's discretionary powers and an individual's confidence in a judicial act.

COMPLAINTS

16. The applicant raised the following complaints.

(a) Under Article 6 § 1 of the Convention he complained that he was denied access to the Court of Cassation which decided to return his appeal on points of law without sufficiently reasoning its decision.

(b) Under Article 1 of Protocol No. 1 he complained that his property rights were violated by the actions of the notary and the court judgments.

THE LAW

A. Article 6 § 1 of the Convention

17. The applicant complained that he was denied access to court by an unreasoned decision and invoked Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

18. The applicant submitted that the Court of Cassation, when deciding not to admit his appeal on points of law, had failed to explain why the issues raised in it could not have a significant impact on the uniform application of the law. He claimed that the grounds raised in his appeal on points of law were in fact well-founded but the Court of Cassation ignored them and did not examine them. The Court of Cassation's practice was to refuse admission of appeals simply by changing names in otherwise standard decisions. Such practice diminished an appellant's confidence in justice.

19. The Government submitted that the applicant's claim was examined on the merits by two judicial instances. His appeal on points of law was returned by the Court of Cassation because it did not comply with the admissibility requirements prescribed by Article 231.2 of the CCP, as in force at the material time. As it was stated in the Court of Cassation's decision of 15 January 2007, those findings were based on the circumstances of the case. Thus, this decision was adopted after an examination of all the grounds raised in the appeal and a full assessment of the circumstances of the case and was sufficiently reasoned. Article 6 of the Convention did not require a detailed answer to every argument, especially by a third level of jurisdiction. The Court of Cassation's jurisdiction was limited only to points of law. Moreover, in the present case the Court of Cassation carried out only an examination of the question of admissibility of the applicant's appeal. In any event, the applicant was mistaken in claiming that the grounds raised in his appeal were well-founded.

20. The Court notes that the applicant alleged that the Court of Cassation's refusal to admit his appeal was in violation of his right of access to court. He further alleged that the Court of Cassation's decision refusing to admit his appeal was unreasoned.

21. In so far as the applicant complains about the denial of access to the Court of Cassation, the Court reiterates that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations 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 *Levages Prestations Services v. France*, 23 October 1996, § 40, *Reports of Judgments and Decisions* 1996-V, and *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 33, *Reports of Judgments and Decisions* 1997-VIII).

22. The Court notes that it has already found that the introduction and application of admissibility requirements in respect of appeals on points of law lodged with the Court of Cassation pursued a legitimate aim in the interests of good administration of justice (see *Borisenko and Yerevanyan Bazalt Ltd v. Armenia* (dec.), no. 18297/08, 14 April 2009). In the present case, the Court of Cassation examined the grounds of the applicant's appeal on points of law and ascertained that they did not meet the relevant admissibility requirements. In such circumstances, the Court does not consider that the Court of Cassation's decision not to admit the appeal was disproportionate to the legitimate aim pursued. Nor can it be maintained, in view of the above-mentioned considerations, that the very essence of the applicant's right to a court was impaired.

23. In so far as the applicant alleges that the Court of Cassation's decision of 15 January 2007 was not sufficiently reasoned, the Court has previously found in respect of leave-to-appeal proceedings that, where a supreme court refuses to accept a case on the basis that the legal grounds for such a case are not made out, very limited reasoning may satisfy the requirements of Article 6 of the Convention (see *Nerva and Others v. the United Kingdom* (dec.), no. 42295/98, 11 July 2000; *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI; *Glender v. Sweden* (dec.), no. 28070/03, 6 September 2005; *Stepenska v. Ukraine* (dec.), no. 24079/02, 12 June 2006; *Jaczkó v. Hungary*, no. 40109/03, § 29, 18 July 2006; *Marini v. Albania*, no. 3738/02, § 106, ECHR 2007-XIV (extracts); *Kukkonen v. Finland (no. 2)*, no. 47628/06, § 24, 13 January 2009; and *Wnuk v. Poland* (dec.), no. 38308/05, 1 September 2009). As regards other preliminary procedures for the examination and admission of appeals on points of law, the Court has similarly acknowledged that an appellate court is not required to give more detailed reasoning when it simply applies a specific legal provision to dismiss an appeal on points of law as having no prospects of success, without further explanation (see *Burg and Others v. France* (dec.), no. 34763/02, ECHR 2003-II; and *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 41, ECHR 2009-...). In some cases even a simple reference to the provisions authorising such procedures may be sufficient (see *X. v. Germany*, no. 8769/79, Commission decision of 16 July 1981, Decisions and Reports 25, p. 240, and *Müller-Eberstein v. Germany*, no. 29753/96, Commission decision 27 November 1996, unreported).

24. The Court considers that these principles apply in the present case. In particular, the applicant's case was examined at two judicial instances with full jurisdiction which gave detailed reasons for their judgments. The procedure before the Court of Cassation, whose jurisdiction was limited only to points of law and whose role was to ensure the uniform application of the law and its development, was a preliminary admissibility procedure which concerned the question of whether the applicant's appeal on points of law met the legal requirements prescribed by the then Article 231.2 § 1 of the CCP to be admitted for an examination on the merits. Having regard to the Court of Cassation's decision of 15 January 2007 (see paragraph 9 above), it cannot be said that the reasoning provided in that decision fell short of the requirements of Article 6 § 1 of the Convention.

25. The Court further notes that both the law and the Court of Cassation's practice of "simplified reasons" were changed following the Constitutional Court's decisions of 9 April 2007 and 8 October 2008. It can only welcome such developments in view of the fact that the Convention sets minimum standards of protection of fundamental rights and that under Article 53 of the Convention nothing in it prevents the High Contracting Parties from ensuring a higher level of protection (see *Wnuk*, cited above).

26. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Article 1 of Protocol No. 1

27. The applicant also raised complaints under Article 1 of Protocol No. 1. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President