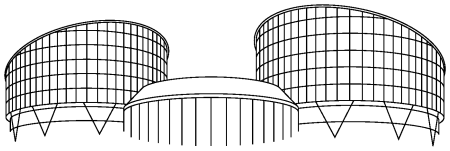

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GHUYUMCHYAN v. ARMENIA

(Application no. 53862/07)

JUDGMENT

STRASBOURG

21 January 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ghuyumchyan v. Armenia,

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

Mirjana Lazarova Trajkovska, *President,*
Päivi Hirvelä,
Linos-Alexandre Sicilianos,
Paul Mahoney,
Aleš Pejchal,
Robert Spano,
Armen Harutyunyan, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 15 December 2015,

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

PROCEDURE

1. The case originated in an application (no. 53862/07) 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 three Armenian nationals, Mr Vahan Ghuyumchyan, Ms Lusine Ghuyumchyan and Ms Gyulnaz Ghuyumchyan ("the applicants"), on 29 October 2007.

2. The applicants, who had been granted legal aid, were represented by Mr E. Marukyan, a lawyer practising in Vanadzor. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicants alleged, in particular, that their late relative, Mr Garegin Ghuyumchyan, was deprived of access to the Court of Cassation since he could not afford to hire an advocate licensed to act before that court in order to lodge an appeal on points of law.

4. On 24 November 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are the son (the first applicant), the daughter-in-law (the second applicant) and the wife (the third applicant) of the late Garegin Ghuyumchyan. They were born in 1965, 1973 and 1947 respectively and live in Vanadzor, Armenia. The first and the third applicants are also Garegin Ghuyumchyan's first heirs, according to the Armenian civil law.

6. The third applicant and Garegin Ghuyumchyan ran a printing house and a small spirit factory as a family business.

7. On 19 July 2002 Garegin Ghuyumchyan was charged with bribe-taking and made an undertaking not to leave his residence. A truck and a television set belonging to him were seized. It appears that he then hired a defence lawyer.

8. On 25 September 2002 the investigating authority decided to dismiss the charge against Garegin Ghuyumchyan for lack of evidence, lifted the seizure and cancelled the undertaking. It appears that after the dismissal of the charge, Garegin Ghuyumchyan's advocate refused to work with him any longer.

9. In 2004 Garegin Ghuyumchyan and the third applicant sold the family business to a private person.

10. On 29 October 2004 Garegin Ghuyumchyan instituted proceedings seeking compensation for wrongful prosecution. In particular, he claimed reimbursement for legal and transport costs. He also claimed compensation for the loss of his family business, alleging that as a result of the prosecution he could not run it and had to sell it at a low price.

11. On 9 January 2006 Garegin Ghuyumchyan supplemented his claim, alleging that as a result of the prosecution the first and the second applicants had had to leave their jobs. The first and the second applicants also joined the proceedings as third parties having additional claims.

12. On 18 May 2006 the Lori Regional Court granted the claim in part, ordering reimbursement of legal costs and part of the transport costs. As for the rest of the claim, the Regional Court dismissed it on the ground that there was no causal link between the sale of the business and Garegin Ghuyumchyan's prosecution or between the first and the second applicants' leaving their jobs and the prosecution.

13. It appears that on 26 July 2006 Garegin Ghuyumchyan lodged a request with the Chamber of Advocates of Armenia, seeking to receive legal aid.

14. On 27 July 2006 the Chairman of the Chamber of Advocates of Armenia informed him in a letter that the Advocacy Act did not provide for legal aid for the type of proceedings in which he was involved.

15. On 17 November 2006 Garegin Ghuyumchyan lodged a complaint with the Lori Regional Prosecutor's Office alleging that on 4 October 2006 he had been beaten by the Head of the Lori Region of Armenia. The outcome of this complaint is unclear.

16. On an unspecified date Garegin Ghuyumchyan and the first applicant lodged an appeal against the judgment of the Regional Court.

17. On 26 January 2007 the Civil Court of Appeal delivered its judgment upholding the judgment of the Regional Court in respect of the reimbursement of part of the travel costs as well as legal fees, but dismissing the rest of the claim.

18. On 22 June 2007 Garegin Ghuyumchyan lodged an appeal with the Court of Cassation against the judgment of the Court of Appeal.

19. By a letter of 28 June 2007 the Chief Registrar of the Court of Cassation returned the appeal, informing him that it had not been admitted for examination as it had not been lodged by an advocate licensed to act before the Court of Cassation, pursuant to Article 223 of the Code of Civil Procedure. The applicants alleged before the Court that their family could not afford the services of such an advocate.

20. On 29 October 2007 Garegin Ghuyumchyan and also the first and the second applicants lodged an introductory letter with the Court in which they complained under Article 6 § 1 that Garegin Ghuyumchyan had been denied access to the Court of Cassation, under Article 6 § 3 (c) that Garegin Ghuyumchyan's defence lawyer had refused to represent him in the compensatory proceedings and that his request for legal aid had been rejected by the Chamber of Advocates. They also complained under Article 1 of Protocol No. 1 that the domestic courts had failed to grant the compensatory claim in full.

21. On 3 November 2007 Garegin Ghuyumchyan died of a heart attack.

22. On 10 May 2008 the applicants lodged their completed application with the Court.

II. RELEVANT DOMESTIC LAW

23. For a summary of the relevant domestic provisions see the judgment in the case of *Shamoyan v. Armenia* (no. 18499/08, §§ 14-18, 7 July 2015).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

24. The applicants complained that Garegin Ghuyumchyan was denied access to the Court of Cassation since he could not afford the services of an

advocate licensed to act before the Court of Cassation in order to lodge an appeal on points of law. They relied on 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 ..."

A. Admissibility

1. Exhaustion of domestic remedies

25. The Government submitted that Garegin Ghuyumchyan had failed to lodge an appeal on points of law in accordance with the applicable procedural rules. In particular, he had not applied to a licensed advocate in order to submit an appeal on points of law in a timely manner. They further submitted that Article 6 of the Advocacy Act envisaged a possibility for advocates to provide *pro bono* legal services. As for the fact that Garegin Ghuyumchyan's request for legal aid to the Chamber of Advocates was refused, this was not related specifically to the proceedings before the Court of Cassation.

26. The applicants submitted that Article 6 of the Advocacy Act provided that advocates could choose to provide *pro bono* legal services but were not obliged to do so. They argued that, prior to lodging an appeal on points of law with the Court of Cassation, Garegin Ghuyumchyan had already been officially informed by the Chairman of the Chamber of Advocates that no legal aid was available in general for the type of civil proceedings in which he was involved.

27. The Court reiterates that in order to comply with the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, § 85, *Reports of Judgments and Decisions* 1998-VIII).

28. The only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that special circumstances existed which absolved him or her from this requirement (see

Kalashnikov v. Russia (dec.), no. 47095/99, ECHR 2001-XI (extracts) and *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006).

29. The Court observes that the essence of the applicants' complaint is that Garegin Ghuyumchyan's access to the Court of Cassation was restricted precisely because of the procedural requirement that appeals on points of law could only be lodged by a licensed advocate, whom their family was unable to approach due to their difficult financial situation. The issue of exhaustion of domestic remedies is therefore closely linked to the merits of the applicants' complaint that Garegin Ghuyumchyan was deprived of his right of access to court because of the state of the law at the material time. Accordingly, the Court considers that the Government's objection should be joined to the merits of the complaint under Article 6 § 1.

2. Compliance with the six-month time-limit by the third applicant

30. The Court points out that the six-month rule is a mandatory one which the Court has jurisdiction to apply of its own motion (see, in particular, *Assanidze v. Georgia* [GC], no. 71503/01, § 160, ECHR 2004-II), even if the Government have not raised that objection (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

31. The Court notes that the introductory letter of 29 October 2007 was lodged by the late Garegin Ghuyumchyan, together with the first and the second applicants. The third applicant joined the proceedings before the Court for the first time in the completed application lodged on 10 May 2008 (see paragraphs 20 and 22 above), that is more than six months after the letter of the Chief Registrar of the Court of Cassation of 28 June 2007 informing Garegin Ghuyumchyan that his appeal on points of law had not been admitted for examination which, in the circumstances of the present case, can be considered to be the starting point for the calculation of the six-month period in respect of this complaint.

32. The Court therefore concludes that the part of the application concerning the third applicant was submitted outside the six-month time-limit and declares it inadmissible.

3. Victim status of the first and second applicants

33. The Government submitted that the first and second applicants could not claim to be victims of an alleged violation of Garegin Ghuyumchyan's right of access to court.

34. The applicants contested the Government's argument and maintained that they were victims of a violation of Article 6 § 1 of the Convention.

35. The Court reiterates that in order to be able to lodge an application in accordance with Article 34, an individual must be able to show that he or she was "directly affected" by the measure complained of (see *Centre for*

Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 96, ECHR 2014 and the cases cited therein). This criterion, however, is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX).

36. The Court has accepted on numerous occasions that the next-of-kin or heir may in principle pursue the application, where the applicant has died after the application was lodged, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, cited above, § 97). In particular, the parents, spouse or children of a deceased applicant have been accepted to be entitled to take part in the proceedings, if they express their wish to do so (see, for instance, the widow and children in *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A and *Stojkovic v. the former Yugoslav Republic of Macedonia*, no. 14818/02, § 25, 8 November 2007).

37. In the present case, Garegin Ghuyumchyan died several days after lodging an introductory letter to the Court in which he complained, *inter alia*, of the denial to him of access to the Court of Cassation due to the lack of financial means to hire a licensed advocate. This fact may raise doubts as to whether lodging an introductory letter conferred the status of applicant on Garegin Ghuyumchyan which, in its turn, could allow the first and second applicants to pursue his complaint following his death.

38. The Court notes that at the relevant time, and prior to the amendments to the Rules of Court which came into effect on 1 January 2014, the date of introduction of an application was, as a general rule, considered to be the date of the first communication from the applicant setting out, even summarily, the object of the application. The Court therefore finds that in the specific circumstances of the present case it can be considered that Garegin Ghuyumchyan died after he lodged an application with the Court. Consequently, the Court's well-established case-law with regard to the right of the next-of-kin of a deceased applicant to pursue his or her application is applicable in the present case.

39. The Court further notes that the first and second applicants were involved as separate parties with additional claims in the proceedings initiated by the late Garegin Ghuyumchyan. The Court notes, however, that the first applicant is the deceased's heir under the domestic law while the second applicant is not. In addition, the second applicant is not Garegin Ghuyumchyan's next of kin.

40. Accordingly, the Court considers that only the first applicant has the requisite *locus standi* under Article 34 of the Convention in respect of Garegin Ghuyumchyan's complaint about the lack of access to court. The Court therefore concludes that the part of the application concerning the second applicant is incompatible *ratione personae* with the provisions of the Convention and declares it inadmissible.

41. The Court notes that this complaint, as far as it concerns the first applicant, 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

42. The first applicant claimed that the refusal of the Court of Cassation to admit Garegin Ghuyumchyan's appeal on points of law was not compatible with the requirements of Article 6 § 1 of the Convention. He submitted that the procedural requirement whereby appeals on points of law could only be lodged by advocates holding a special licence to act before the Court of Cassation was found by the Constitutional Court to be unconstitutional, since it disproportionately restricted access to that court by making judicial protection conditional on an appellant's financial means.

43. The Government submitted that the first applicant was not precluded from lodging an appeal on points of law with the Court of Cassation but there was a certain procedure envisaged by the law at the material time which should have been respected by a person wishing to apply to this court. They argued that procedural requirements for lodging appeals were not incompatible with the guarantees of Article 6 of the Convention. Furthermore, the domestic law envisaged a possibility to receive free legal assistance upon the initiative of an advocate. The Government finally submitted that the requirement that appeals on points of law could only be lodged by licensed advocates pursued the legitimate aim of ensuring the quality of appeals lodged with the Court of Cassation and was later abolished due to difficulties revealed during the practical implementation of the relevant procedural rules.

44. 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, among other authorities, *Levages Prestations Services v. France*, 23 October 1996, § 40, *Reports of Judgments and Decisions* 1996-V citing *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93; *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 59, Series A no. 316-B and *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012).

45. The Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations" (see *Levages Prestations Services*, cited above, § 44; and *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32). However, the manner in which Article 6 § 1 is to be applied in relation to appellate or cassation courts depends upon the special features of the proceedings involved. Account must be taken of the entirety of the proceedings conducted in the domestic legal order and of the role of the appellate or cassation court therein (see *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 56, Series A no. 115 and the cases cited therein; *Tolstoy Miloslavsky v. the United Kingdom*, cited above, § 59).

46. Furthermore, the requirement that an appellant be represented by a qualified lawyer before the court of cassation is compatible with the characteristics of the Supreme Court as a highest court examining appeals on points of law and it is a common feature of the legal systems in several member States of the Council of Europe (see, for instance, *Siałkowska v. Poland*, no. 8932/05, § 106, 22 March 2007; *Gillow v. the United Kingdom*, 24 November 1986, § 69, Series A no. 109).

47. The Court further reiterates that it is for the Contracting States to decide how they should comply with the fair hearing obligations arising under the Convention. However, the Court must satisfy itself that the method chosen by the domestic authorities in a particular case is compatible with the Convention (see *Siałkowska v. Poland*, cited above, § 107).

48. The Court notes that it has already examined an identical complaint and similar arguments in relation to its admissibility and merits in the case of *Shamoyan* (see *Shamoyan v. Armenia*, no. 18499/08, §§ 32-39, 7 July 2015), where it rejected the Government's objection as to non-exhaustion of domestic remedies and found that the absence of the possibility to apply for legal aid, given the procedural requirement at the material time that appeals on points of law could only be lodged by advocates licensed to act before the Court of Cassation, placed a disproportionate restriction on the effective access to that court. The Court does not see any reason to depart from that finding in the present case.

49. In view of the foregoing, there has been a violation of Article 6 § 1 of the Convention. The Government's objection as to non-exhaustion of domestic remedies is accordingly dismissed.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. Lastly, the first applicant lodged a number of complaints on behalf of Garegin Ghuyumchyan and on his own behalf relying on Articles 3, 6, 10 and Article 1 of Protocol No. 1 to the Convention.

51. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The first applicant claimed a total of 40,000 euros (EUR) in respect of non-pecuniary damage suffered by Garegin Ghuyumchyan and the rest of the family. He submitted, in particular, that Garegin Ghuyumchyan experienced grave mental and physical suffering when confronted with the inability to obtain justice and passed away because of a heart attack on 3 November 2007.

54. The Government asked for the claims in respect of non-pecuniary damage to be rejected.

55. The Court accepts that Garegin Ghuyumchyan suffered non-pecuniary damage from the inability to appeal against the decision of the Court of Appeal. Making its assessment on an equitable basis, the Court awards the first applicant EUR 3,600 under this head.

B. Costs and expenses

56. The first applicant appears to have claimed EUR 1,150 for the costs and expenses incurred before the Court. In particular, he submitted a contract for provision of legal services concluded between him and E. Marukyan, his representative, according to which the total cost of legal representation before the Court was stated at EUR 2,000, including the EUR 850 requested from the Court as legal aid which had not yet been received at the time of submission of just satisfaction claims. The first

applicant was bound to pay the rest of the amount, that is EUR 1,150, either before the receipt of the legal services or, in case that was not possible, after the Court's final judgment.

57. The Government submitted that the claims under this head had not been stated clearly. Besides, the legal costs claimed had not actually been incurred since no payment had yet been made to the lawyer.

58. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court does not find it necessary to determine whether the costs and expenses claimed by the first applicant could be considered to have actually been incurred for the following reason. The Court notes that in the present case legal aid was granted by the Court in the amount of EUR 850. Regard being had to the above criteria, and in particular the scope of the work done by the first applicant's representative, the Court considers that the sum of EUR 850 granted by means of legal aid is a reasonable amount to cover all the costs for the proceedings before the Court and rejects the claims under this head.

C. Default interest

59. 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. *Joins* the Government's objection as to non-exhaustion of domestic remedies to the merits of the complaint under Article 6 § 1 of the Convention and *dismisses* it;

2. *Declares* the first applicant's complaint concerning lack of access to the Court of Cassation admissible and the remainder of the application inadmissible;

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

4. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage, to be

converted into Armenian drams at the rate applicable at the date of settlement plus any tax that may be chargeable;

(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 first applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President