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

FIRST SECTION

DECISION

Application no. 16346/10
Gevorg SAFARYAN
against Armenia

The European Court of Human Rights (First Section), sitting on 14 January 2020 as a Chamber composed of:

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Armen Harutyunyan,
Pere Pastor Vilanova,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 March 2010,

Having regard to the decision to give notice of the complaints concerning the alleged violation of the principle of equality of arms and the confiscation of the applicant's property to the Armenian Government ("the Government") and to declare inadmissible the remainder of the application,

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 Gevorg Safaryan, is an Armenian national who was born in 1961 and lives in Yerevan. He was represented before the Court by Mr A. Zohrabyan and Ms L. Grigoryan, lawyers practising in Yerevan.

2. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights.

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

A. The facts submitted by the applicant at the time of the introduction of the application

4. On 22 October 2007 the Investigative Department of the State Revenue Committee instituted criminal proceedings on account of aggravated tax evasion against the applicant, former executive director and founder of "Pizza Di Roma" LLC (the company), who held 100% of its shares.

5. On the same date the applicant was detained.

6. On an unspecified date the applicant was charged under Article 205 § 2 of the Criminal Code for having deliberately concealed the company's profits during the years 2006 to 2007, as a result of which the company had avoided paying taxes in the amount of AMD 321,649,580 (approximately EUR 680,000) including unpaid taxes and penalties. Charges were also brought against the treasurers of the company, A.G. and S.D., for having assisted the applicant in concealing the company's profits. The applicant was also charged with failing to register a number of company employees, which had resulted in the company avoiding social payments in the amount of AMD 1,920,000 (approximately EUR 4,060).

7. On 19 June 2008 the case was sent to the Kentron and Nork-Marash District Court of Yerevan for examination on the merits.

8. On 9 October 2008 the State Revenue Committee (the SRC) lodged a civil claim against the company within the framework of the criminal proceedings against the applicant. The SRC requested the trial court to make an order to seize AMD 396,943,193 (approximately EUR 840,000) from the company, which included the initial tax duties and further penalties imposed on the company.

9. It appears that the SRC was recognised as a civil claimant within the framework of the criminal proceedings against the applicant. It further appears that at some point during the proceedings before the Kentron and Nork-Marash District Court the applicant made a voluntary payment of AMD 100,000,000 (approximately EUR 210,000) in compensation for the damage caused by the offence.

10. On 6 November 2008 the applicant was released on bail against AMD 3,500,000 (approximately EUR 7,400).

11. On 7 April 2009 the Kentron and Nork-Marash District Court found the applicant guilty as charged and sentenced him to four years' imprisonment without confiscation of property. The District Court decided that the applicant should not serve his sentence. It also decided to grant the civil claim lodged by the SRC partially in the amount of AMD 221,649,250 (approximately EUR 469,000) and ordered the confiscation of the applicant's shares in the company, his personal movable and immovable property and the amount of bail paid during the proceedings. Also, the District Court sentenced A.G. and S.D. to three years' and one year's

imprisonment respectively and exempted them from serving their sentence. The District Court further ordered the confiscation of AMD 39,553,207 from A.G. and AMD 12,084,634 from S.D. in joint liability with the applicant.

12. The applicant lodged an appeal against the judgment of 7 April 2009 in its part relating to the civil claim. He argued, in particular, that in the course of the criminal proceedings no civil claim had been lodged against him and he was not a civil defendant in the proceedings, whereas the SRC had introduced a civil claim against the company requesting the trial court to seize AMD 396,943,193 from the company in fulfilment of its obligations towards the State budget. In such circumstances, he had no opportunity to familiarise himself with the claims advanced or respond to them, while the trial court had no power to order the confiscation of his property in the absence of a duly formulated civil claim lodged against him.

13. On 19 June 2009 the Criminal Court of Appeal rejected the applicant's appeal. In doing so it found, in particular, that the trial court had determined correctly the amount of damage caused to the State as a result of the offence committed by the applicant and that, accordingly, the issue of the applicant's responsibility had been decided properly.

14. The applicant lodged an appeal on points of law raising similar arguments to those raised in his previous appeal.

15. On 26 August 2009 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit. The relevant decision was served on the applicant on 18 September 2009.

16. According to the applicant, on 26 February 2010 the bailiff made a decision to attach his movable and immovable property in the amount of AMD 39,750,967 (approximately EUR 84,000). Furthermore, by decision of 2 March 2010, the bailiff attached the applicant's shares in the company and his movable and immovable property in the amount of AMD 232,732,059 (approximately EUR 493,000). At the same time, the applicant was prohibited from using or alienating his property.

B. The facts submitted by the Government after communication of the application

17. In response to the enquiry of the then Deputy Representative of the Republic of Armenia before the Court, by letter of 21 April 2016 the Department for Enforcement of Judicial Acts provided the following information with regard to the enforcement proceedings in relation to the applicant's case.

On the basis of three writs of execution issued by the Kentron and Nork-Marash District Court, three distinct sets of enforcement proceedings had been initiated. In particular, within the framework of proceedings initiated on 9 October 2009 AMD 39,553,207 (approximately EUR 84,000)

was to be seized from the applicant and A.G. Furthermore, within the framework of a second set of enforcement proceedings initiated on the same date AMD 12,084,634 (approximately 25,450) was to be seized from the applicant and S.D. Lastly, as a result of enforcement proceedings initiated on 25 December 2009 AMD 170,011,739 (approximately EUR 358,000) was to be seized from the applicant.

18. On 7 October 2010 the enforcement proceedings against the applicant were terminated on the grounds that the State had filed a bankruptcy claim against him.

19. On 3 February 2011 the SRC and the acting director of the company signed a reconciliation agreement in the course of a separate set of proceedings pending before the Administrative Court whereby the parties agreed on the sum of the tax debt to be paid by the company.

The Government provided a copy of the relevant reconciliation agreement, according to which the SRC had agreed to withdraw its claim against the applicant seeking to have the latter declared bankrupt. Moreover, the SRC had undertaken not to pursue any further claims against the company or the applicant with regard to the facts giving rise to the criminal proceedings at issue.

COMPLAINTS

20. The applicant complained that in the course of the criminal proceedings against him, he was deprived of the opportunity to familiarise himself with the civil claim lodged by the SRC against the company and submit his arguments in its regard, although the trial court had eventually ordered the confiscation of his own property. He 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 and public hearing ... by [a] ... tribunal ..."

21. The applicant further complained that a financial liability attributable to the company in the amount of AMD 221,649,250 (approximately EUR 469,000) had been unlawfully imposed on him as a result of the judgment of 7 April 2009 while the bailiffs had attached his property in the amounts of AMD 39,750,967 (approximately EUR 84,000) and AMD 232,732,059 (approximately EUR 493,000) respectively. He relied on Article 1 of Protocol No. 1 to the Convention which provides the following:

> "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."

THE LAW

A. The parties' submissions

22. The Government argued that the applicant had failed to provide the Court with all the facts relevant to his complaints under Article 1 of Protocol No. 1 to the Convention. In particular, he had omitted to inform the Court about the fact that after the introduction of his application, on 3 February 2011 the company and the SRC had signed a reconciliation agreement whereby the authorities had undertaken to withdraw all the claims against the applicant. As a result, in the end no assets were actually seized from the applicant. The only sum seized from him was AMD 3,500,000 (approximately EUR 7,400) that he had put up for bail. In the alternative, the Government maintained that the applicant had lost his victim status.

23. In his observations the applicant maintained his complaint under Article 6 § 1 of the Convention. In so far as his complaints under Article 1 of Protocol No. 1 were concerned, the applicant submitted that he had nevertheless suffered material damage since he had paid the amount of AMD 100,000,000 while the amount of AMD 3,500,000 (approximately EUR 7,400) he had put up for bail had been seized. The applicant informed the Court that the bankruptcy proceedings against him had been discontinued. He did not provide any reasons to explain his omission to inform the Court of the reconciliation agreement signed on 3 February 2011.

B. The Court's assessment

24. The Court reiterates that the concept of "abuse", within the meaning of Article 35 § 3 of the Convention, must be understood as any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and that impedes the proper functioning of the Court or the proper conduct of the proceedings before it (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 65, 15 September 2009). An application may be rejected as an abuse of the right of individual petition if it has been established that it was knowingly based on untrue facts or if the applicant submitted incomplete or misleading information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references). The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments have

occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (ibid., § 28). Lastly, not every omission of information will amount to abuse; the information in question must concern the very core of the case (see, for example, *Komatinović v. Serbia* (dec.), no. 75381/10, 29 January 2013).

25. Turning to the present case, the Court notes that in his application lodged on 18 March 2010 the applicant complained under Article 6 § 1 of the Convention that he was deprived of a fair trial and under Article 1 of Protocol No. 1 that as a result of those trial proceedings and the subsequent enforcement proceedings based on them he was unlawfully deprived of his possessions for the tax liabilities of the company. He alleged, in particular, that as a result of the events complained of he had suffered pecuniary damage in the amount of AMD 221,649,250 (approximately EUR 469,000).

26. The Court observes that on 3 February 2011 a reconciliation agreement was signed between the tax authorities and the company formerly directed by the applicant whereby all the pecuniary claims against the company and the applicant were dropped in so far as the facts giving rise to the present application were concerned (see paragraph 19 above). On 10 March 2016 the Court, being unaware of this development, communicated the application to the respondent Government. The Court only learned of this fact from the Government's observations of 6 July 2016.

27. The Court reiterates that according to Rule 47 § 7 of the Rules of Court, applicants have the obligation to keep the Court informed of all circumstances relevant to the application. Although applicants are by no means expected to set out all possible information about a case in their application, it is their duty to present, at least, the essential facts at their disposal which are clearly of significant importance for the Court to be able to assess the case properly (see *Komatinović*, cited above). In the present case, however, the applicant failed to meet this obligation. Not only did the applicant omit to inform the Court of the developments in question, but he did not provide any explanation for his omission.

28. The Court considers that the developments in question concerned the very core of the subject matter of the applicant's complaints under Article 1 of Protocol No. 1, as formulated in his application. In particular, the fact that no assets had finally been seized from the applicant within the framework of the enforcement proceedings initiated on the basis of the disputed judgment of 7 April 2009 was relevant to the determination of the question of whether the applicant could still claim to be a victim of an

alleged violation of rights guaranteed under Article 1 of Protocol No. 1 of the Convention.

29. The Court also observes that, as was revealed in the information and documents provided by the respondent Government, the applicant had misrepresented the amounts which, according to him, were to be seized from him within the framework of the enforcement proceedings. In particular, without submitting any supporting documents, the applicant had stated in his application that in the course of the enforcement proceedings the bailiff had attached his property in the amount of AMD 39,750,967 (approximately EUR 84,000) and AMD 232,732,059 (approximately EUR 493,000) respectively (see paragraph 16 above). However, as it appears from the information provided by the Department for the Enforcement of Judicial Acts, the information provided by the applicant was not accurate (see paragraph 17 above), whereas in his observations the applicant did not refer to this matter. Furthermore, in his application the applicant had failed to mention his voluntary payment of AMD 100,000,000 (approximately EUR 210,000) during the proceedings in compensation for the damage caused by the offence imputed to him (see paragraphs 9 and 23 above). The fact that the applicant, being represented by an advocate, first omitted to disclose the fact of his voluntary payment of a significant sum during the criminal proceedings against him and then failed to divulge relevant information about the settlement with the authorities while no arguments were adduced to justify such course of action, leads the Court to find it sufficiently established that the applicant intended to mislead the Court on a matter concerning the very core of at least one of his complaints under the Convention.

30. The Court acknowledges that the above-mentioned omissions on the part of the applicant directly concerned only one of the two complaints communicated to the respondent Government. Nevertheless, the Court considers that the applicant's abusive conduct in general, that is the submission of inaccurate and incomplete information at the outset and his subsequent omission to inform the Court of crucial developments, amounts to an abuse of the right of petition and should have implications for the admissibility of his entire application.

31. Accordingly, this application as a whole must be rejected as an abuse of the right of individual petition pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 6 February 2020.

Renata Degener Deputy Registrar	Ksenija Turković President