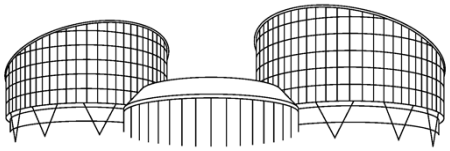

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SEDRAKYAN v. ARMENIA

(Application no. 5337/13)

JUDGMENT

STRASBOURG

26 September 2023

This judgment is final but it may be subject to editorial revision.

In the case of Sedrakyan v. Armenia,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Tim Eicke, *President*,
Branko Lubarda,
Ana Maria Guerra Martins, *judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 5337/13) 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") on 29 December 2012 by an Armenian national, Mr Artur Sedrakyan, born in 1976 and living in Burbank ("the applicant") who was represented by Mr A. Voskanyan, a lawyer practising in Vanadzor;

the decision to give notice of the application to the Armenian Government ("the Government"), represented by their Agent, Mr G. Kostanyan and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters;

the parties' observations;

Having deliberated in private on 5 September 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the denial to the applicant of the right to appeal against a lower court judgment refusing his compensation claim for his flat alienated by a local authority.

2. Since 1999 the applicant had owned a two-room flat in Gugark village which was situated in a building damaged by an earthquake in 1988.

3. It appears that in December 2004 Y.E., the then head of the village, sold the said building to a third person at auction, without the prior approval of the local council. Following this transaction the building, including the applicant's flat, was demolished by the buyer, based on a permission granted by Y.E.

4. At some point a criminal investigation was opened into possible abuse of authority by Y.E. in relation to the above events. A forensic construction examination was ordered which concluded, *inter alia*, that it had been impossible for the experts to determine the degree of damage and the market value of the building in question. According to the Government, the criminal case against Y.E. was discontinued because of the expiry of the relevant limitation period.

5. On 11 December 2009 the applicant lodged a claim with the Lori Regional Court seeking compensation for the damage suffered as a result of the demolition of his flat. In particular, he requested to be provided with a

two-room flat in Gugark village. The applicant paid 4,000 Armenian drams (AMD) in respect of court fees, which corresponded to the rate payable for non-pecuniary claims before first-instance courts.

6. On 17 December 2009 the Lori Regional Court decided to admit the applicant's claim for examination on the merits, noting that it complied with the provisions of the Code of Civil Procedure as in force at the time.

7. On 16 March 2012 the Regional Court rejected the applicant's claim on the grounds that he had not suffered any damage. Relying on certain expert reports from 2000 and 2002, according to which the building at issue had been damaged and subject to demolition, it concluded that even though Y.E. had acted unlawfully, the applicant had not suffered any real damage as a result of his actions because the flat at issue had not been suitable for living at the time of registration of the applicant's title in 1999 and had not represented any value as a flat.

8. The applicant lodged an appeal, accompanied with proof of payment of court fees in the amount of AMD 10,000 which corresponded to the rate payable in respect of non-pecuniary claims before appellate courts.

9. On 7 May 2012 the Civil Court of Appeal returned the applicant's appeal without examining it due to underpayment of court fees. It noted in particular that the applicant had disputed a judicial act which was of pecuniary nature. Hence, under the domestic law, he should pay 3 per cent of the market value of the property, to be determined by a relevant certificate or conclusion delivered by a competent body which should be attached to the appeal, less AMD 10,000 which had already been paid. The Court of Appeal gave the applicant a two-week time to rectify the error and resubmit his appeal. It also noted that the applicant could lodge an application for concessions in respect of court fees together with evidence necessary to grant such an application.

10. The applicant appealed against this decision arguing, *inter alia*, that the Court of Appeal had failed to state what, in its opinion, was the correct amount due to be paid when concluding that he had underpaid the court fees. He further argued that, according to the established practice, court fees for pecuniary claims, the amount of which could not be determined, were paid according to the rates applicable to non-pecuniary claims because there were no specific domestic rules in respect of such pecuniary claims. He claimed that this approach had been adopted by the Regional Court since it had admitted his claim while the Court of Appeal had arbitrarily left his appeal without examination.

11. On 4 July 2012 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

12. The applicant complained that he had been denied access to the Court of Appeal, in breach of the guarantees of Article 6 § 1 of the Convention.

13. The Government contended that the essence of the applicant's right of access to a court had not been impaired because, firstly, the latter could have resubmitted his appeal after rectifying the error identified by the Court of Appeal. Alternatively, the applicant could have applied for concessions in respect of court fees as mentioned in the decision of the Court of Appeal. In fact, given that his claim concerned compensation for criminally inflicted damage, the applicant was exempt from court fees by operation of law. Hence, had he applied for fee waiver, the Court of Appeal would have granted it and would have examined the merits of his appeal.

14. The Court notes that there is no dispute between the parties that Article 6 is applicable to the proceedings in question. As the matter in dispute concerned a compensation claim, the Court has no reason to doubt the applicability of Article 6 § 1 of the Convention (see, for instance, *Gogić v. Croatia*, no. 1605/14, § 28, 8 October 2020).

15. The Court further notes that the Government's contentions both represent in substance a plea of non-exhaustion of domestic remedies, which is closely linked to the merits of the applicant's complaint about the lack of access to a court and should therefore be joined to the merits (*Liebreich v. Germany* (dec.), no. 30443/03, 8 January 2008).

16. The Court furthermore finds that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

17. The general principles concerning access to a court have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-81 and 84, 5 April 2018). The requirement to pay court fees in the civil courts in connection with claims they are asked to determine cannot be regarded as a restriction on the right of access to a court that is incompatible *per se* with Article 6 § 1 of the Convention, provided that the very essence of the right of access to court is not impaired and the measures applied are proportionate to the aims pursued in the light of Article 6 (see *Nalbant and Others v. Turkey*, no. 59914/16, § 34, 3 May 2022).

18. The Government submitted that the impugned restriction served the legitimate interests of justice, and the Court sees no reason to hold otherwise (see *Laçi v. Albania*, no. 28142/17, § 53, 19 October 2021, and the authorities cited therein).

19. The Court notes that by lodging a compensation claim the applicant sought to obtain redress for his demolished flat, and, as a second-instance court, the Court of Appeal had full jurisdiction to examine both questions of

fact and law. It reiterates in this connection that, where appeal procedures are available, Contracting States are required to ensure that physical and legal persons within their jurisdiction continue to enjoy the same fundamental guarantees of Article 6 before the appellate courts as they do before the courts of first instance (see, *inter alia*, *Paykar Yev Haghtanak Ltd v. Armenia*, no. 21638/03, § 45, 20 December 2007).

20. The Court does not see anything unusual in a system in which court fees for pecuniary claims are dependent on the amount of dispute (see *Urbanek v. Austria*, no. 35123/05, § 57, 9 December 2010). It further notes that the Court of Appeal was entitled to disagree with the applicant that his pecuniary claim could not be evaluated. That said, in the circumstances of the present case it is doubtful that the applicant could have met the requirement imposed on him by the Court of Appeal. In particular, the Court of Appeal referred vaguely to the "the market value of the property", which moreover was to be determined by a certificate or conclusion delivered by a competent body, and gave the applicant a two-week time-limit to comply (see paragraph 9 above). However, the applicant's old flat had long been demolished and even the forensic experts had been unable to determine the value of his building in the course of the criminal proceedings (see paragraph 4 above). Moreover, the applicant had not sought another specific two-room flat which could have possibly been evaluated. In such circumstances, the Court cannot agree with the Government that the applicant lacked diligence because he had not complied with a vague and formalistic, in the given circumstances, requirement by the Court of Appeal but contested its decision before the Court of Cassation. More importantly, the Government failed to explain how the applicant was supposed to carry out such evaluation, within a two-week period, so that he could determine and pay the amount of the court fees due and resubmit his appeal. Nor did they submit any examples of the domestic practice that, in similar circumstances, the requirement imposed by the Court of Appeal had been reasonable to meet. On the other hand, they did not contest the applicant's argument that, according to the existing practice, in circumstances where it was not possible to determine the value of the claim, appellants used to pay the amount of court fees applicable to non-pecuniary claims which was evidenced by the approach of the Regional Court in the applicant's case. In the Court's view, this did not rule out the possibility, as appropriate, to supplement such payment at a later stage if, following the examination of the claim on the merits, the domestic court established the value of the applicant's claim. The Court is therefore not persuaded by the Government's argument that the applicant should be blamed for not complying with the rules of appeal.

21. As regards concessions in respect of court fees (see paragraph 13 above), firstly, there is no evidence that the applicant was a victim party in the criminal proceedings at issue, and the Government failed to explain or provide any domestic practice that, at the time of the events, the relevant

exemption in respect of compensation claims for criminally inflicted damage applied despite the fact that the criminal proceedings against Y.E. had been discontinued. Be that as it may, the Government failed to indicate any domestic provision which would require appellants to lodge a fee waiver application in respect of claims where the exemption from court fees applied by operation of law. Hence, by suggesting that the applicant submit an application for concessions in respect of court fees "[t]ogether with evidence necessary to grant it" the Court of Appeal does not appear to point, as the Government alleged, to the fee waiver applicable *ipso jure*, but rather to a conditional fee waiver on account of one's financial situation. In this respect, the Court takes note of the applicant's argument that he could not request deferral of or exemption from court fees based on his financial situation because, firstly, he could not substantiate his indigence given his alleged sufficient revenues, and, in any event, he could not lodge such a request when he did not know the actual amount of the court fees due and thus his capacity to pay it.

22. In sum, the applicant can be considered to have complied with the requirements of Article 35 § 1 of the Convention by contesting the decision of the Court of Appeal before the Court of Cassation. The Court therefore rejects the Government's claim of non-exhaustion.

23. Having regard to the foregoing, the Court concludes that, in the circumstances of the present case, the restriction imposed on the applicant's access to the Court of Appeal was disproportionate and impaired the very essence of his right of access to a court.

24. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

25. The applicant complained that he was deprived of his property unlawfully and that owing to the fact that he had been denied access to a court in respect of his compensation claim, his rights under Article 1 of Protocol No. 1 to the Convention had been breached.

26. The Government contended that the applicant had failed to exhaust the effective domestic remedies because he had not complied with the rules of appeal (see paragraph 13 above). Alternatively, the final decision determining the merits of his claim was that of the Regional Court and therefore, the six-month time-limit started running from the date of the Regional Court's judgment of 16 March 2012.

27. The Court notes that the applicant's complaint under Article 1 of Protocol No. 1 is closely linked to that examined under Article 6 § 1 of the Convention regarding access to a court and that it cannot speculate on the outcome of the proceedings had it not been for the violation it has found.

Regard being had to its findings above that the Court of Appeal had imposed a disproportionate burden on the applicant denying him an opportunity to obtain an examination on the merits of his case, and had thereby violated his right of access to a court, the Court considers that it is not necessary to rule on the applicant's complaint under Article 1 of Protocol No. 1 (compare *Petko Petkov v. Bulgaria*, no. 2834/06, § 38, 19 February 2013, and *Adilovska v. North Macedonia*, no. 42895/14, § 38, 23 January 2020).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

29. The Government contested these claims.

30. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 § 1 of the Convention. It reiterates that the most appropriate form of redress for a violation of Article 6 § 1 would be to ensure that the applicant, as far as possible, is put in the position in which he or she would have been had this provision not been disregarded (see *Petko Petkov*, cited above, § 42). The Court finds that this principle applies in the present case as well. Consequently, it considers that the most appropriate form of redress would be the reopening of the proceedings in accordance with the requirement of Article 6 § 1 of the Convention should the applicant so request (*Paykar Yev Haghtanak Ltd*, cited above, §§ 57-58). At the same time, and regard being had to the specific circumstances of the case, it awards the applicant EUR 7,500 in respect of non-pecuniary damage plus any tax that may be chargeable.

31. The applicant did not make any claims in respect of legal costs. There is thus no call for award in that respect.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

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

2. *Declares* the application admissible;

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

4. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu	Tim Eicke
Acting Deputy Registrar	President