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

FOURTH SECTION

DECISION

Application no. 3948/14
Karen HARUTYUNYAN
against Armenia

The European Court of Human Rights (Fourth Section), sitting on 5 December 2023 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. 3948/14) 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 14 December 2013 by an Armenian national, Mr Karen Harutyunyan, who was born in 1969, lived in Yerevan ("the applicant") and was represented by Ms M. Grigoryan, a lawyer practising in Abovyan;

the decision to give notice of the complaint under Article 6 of the Convention 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, and to declare inadmissible the remainder of the application;

the parties' observations;

the letter of 4 June 2019 from the applicant's lawyer informing the Court of the applicant's death and of his mother's wish to pursue the application lodged by the applicant;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged denial to the applicant of access to court.

2. On 14 June 2011 the applicant concluded a preliminary agreement with a private company ("the company") which undertook to sell him a flat. In the

scope of the preliminary agreement, the applicant paid the company 29,750,000 AMD (allegedly around 80 percent of the purchase price).

3. On 4 October 2011 in a civil dispute between the company and a private person L.A., the Kentron and Nork-Marash District Court of Yerevan ("the District Court") approved a settlement agreement between the parties, according to which the company undertook to provide L.A. with two flats in pursuance of its obligation to compensate the latter for taking her property for State needs. That judgment became final on the same day. The settlement agreement contained assurances from the company that it did not have any preliminary agreements with a third party in respect of the flats to be given to L.A.

4. One of the above-mentioned flats was the same flat which the company was to sell the applicant.

5. Soon thereafter, a criminal investigation had been launched in respect of the chairman of the company, G.P., on account of a large-scale fraud committed against a number of persons, including the applicant, on the pretext of selling flats.

6. On 21 August 2012 the investigator accorded the applicant the status of a victim in the above criminal case. On 23 October 2012 the investigator granted the applicant's application to recognise his relative as his representative.

7. On 9 November 2012 the investigator informed the applicant's representative about the completion of the investigation and his right to access the criminal case material. The latter stated in writing that he did not wish to access the case material.

8. Having learnt about the District Court's judgment of 4 October 2011 during the above criminal proceedings, on 25 March 2013 the applicant filed an out-of-time appeal with the Civil Court of Appeal ("the Court of Appeal") under Article 207 § 5 of the former Code of Civil Procedure ("the CCP"; in force between 1999-2018), seeking to reverse the judgment of 4 October 2011. The applicant failed to submit a copy of his appeal even though he was asked to do so by the Court.

9. According to Article 207 § 5 of the CCP, as in force at the time, persons who had not been involved as parties to proceedings, but whose rights and obligations had been affected by a court judgment, were entitled to lodge an appeal within three months of the date on which they had become aware, or ought to have become aware, of the adoption of that judgment.

10. On 15 April 2013 the Court of Appeal declared the applicant's appeal inadmissible as out-of-time on the grounds that he had missed the three-month deadline for lodging an appeal prescribed by Article 207 § 5 of the CCP. According to the relevant decision, the applicant asked that court to restore the missed time-limit for appeal claiming that he had learnt about the judgment of 4 October 2011 only on 18 January 2013 when he had studied the criminal case material against G.P. The Court of Appeal however noted

that the applicant had been accorded the status of a victim on 21 August 2012 and his representative had been informed about the completion of the investigation on 9 November 2012 but had refused to access the criminal case material. The Court of Appeal reasoned that the applicant had had the opportunity to find out about the judgment of 4 October 2011 at an earlier stage by accessing the criminal case material and therefore his arguments as to why his appeal should be admitted could not be considered valid. It found that the applicant's application to restore the missed time-limit was unfounded.

11. On 13 May 2013 the applicant lodged an appeal on points of law and the Court of Cassation declared it inadmissible for lack of merit by a decision which was notified to him on 14 June 2013.

THE COURT'S ASSESSMENT

A. Preliminary remarks

12. The Court notes that the applicant died on 24 October 2018, while the case was pending before the Court. The applicant's lawyer informed the Court that his mother, Ms Lilia Melikyan, wished to pursue the application lodged by him. The Government did not object. The Court accepts that the late applicant's mother has a legitimate interest in pursuing the application in the late applicant's stead (compare *Mnatsakanyan v. Armenia*, no. 2463/12, §§ 41-43, 6 December 2022). For convenience, it will, however, continue to refer to Mr Harutyunyan as the applicant in the present decision (ibid., § 43).

B. Alleged violation of Article 6 § 1 of the Convention

13. The Government disputed the applicability of Article 6 of the Convention.

14. The Court does not need to address the Government's objection regarding the applicability of Article 6 because the complaint is in any event inadmissible for the reasons set out below.

15. The applicant alleged a violation of his right of access to court. In particular, he maintained that he had learnt of the District Court's judgment of 4 October 2011 only on 18 January 2013 and had thus complied with the three-month time-limit under Article 207 § 5 of the CCP by having lodged his appeal on 25 March 2013. The fact that his representative had been granted access to the criminal case material at an earlier date could have no bearing on this fact because the latter did not have a legal background, the criminal case was complicated, the case file was voluminous, and in any event, he could not have suspected the existence of the impugned judgment.

16. The general principles concerning access to a court have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018).

17. The Court notes that the rules governing the time-limits for lodging an appeal are aimed at ensuring a proper administration of justice and compliance, in particular, with the principle of legal certainty (*Kamenova v. Bulgaria*, no. 62784/09, § 47, 12 July 2018). Litigants should expect those rules to be applied (see, *mutatis mutandis*, *Miragall Escolano and Others v. Spain*, nos. 38366/97 and 9 others, § 33, ECHR 2000-I). Moreover, it is in the first place for the national courts to interpret and apply domestic law. This applies in particular to the interpretation by courts of rules of a procedural nature. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, for instance, *Klauz v. Croatia*, no. 28963/10, § 86, 18 July 2013).

18. In the present case, there is no information in the case file as regards the applicant's arguments submitted to the Court of Appeal in support of his application to restore the time-limit except for the fact that he had learnt about the impugned judgment after having studied the criminal case material on 18 January 2013 (see paragraph 10 above). In the light of the arguments and evidence submitted by the applicant, the Court of Appeal had to determine the point of time when the applicant had become aware or ought to have become aware of the judgment of 4 October 2011. It found the applicant's application unsubstantiated in view of the fact that the latter had a possibility of apprising himself of the criminal case material, and thus the impugned judgment of the District Court, at an earlier date than that indicated by him – he had been accorded the status of a victim in the scope of the criminal case on 21 August 2012 and his representative had been granted access to the criminal case file on 9 November 2012. Having regard to the documents in the case file, the Court does not find anything arbitrary in the impugned decision on the grounds that the applicant, who was legally represented before the Court of Appeal, had failed to substantiate his request to restore the missed deadline.

19. The Court reiterates that the parties must be able to avail themselves of the right to bring an action or to lodge an appeal from the moment they can effectively apprise themselves of court decisions imposing a burden on them or which may infringe their legitimate rights or interests (see *Miragall Escolano and Others*, cited above, § 37). In the instant case, however, the Court of Appeal, relying on "ought to become aware" condition contained in Article 207 § 5 of the CCP, essentially found that the applicant's failure to comply with the relevant time-limit for appeal had been due to his lack of sufficient diligence (compare *Cañete de Goñi v. Spain*, no. 55782/00, § 40, ECHR 2002-VIII, and contrast *Raihani v. Belgium*, no. 12019/08, § 38, 15 December 2015). Regard being had to the material in its possession, the Court considers that such an interpretation of the domestic law does not

appear arbitrary or liable to undermine the very essence of the applicant's right of access to a court. Also, it does not find that the decision of the Court of Appeal was unreasonable or disproportionate to the aim sought to be achieved (see, *mutatis mutandis*, *Paslavičius v. Lithuania*, no. 15152/18, § 83 *in fine*, 18 July 2023).

20. It therefore follows that the application must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 January 2024.

Valentin Nicolescu Acting Deputy Registrar	Tim Eicke President