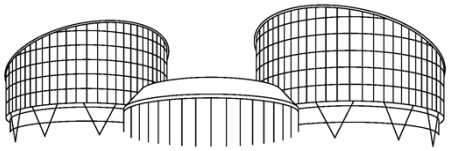

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF FLJYAN v. ARMENIA

(Application no. 4414/15)

JUDGMENT

STRASBOURG

6 March 2025

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

In the case of Fljyan v. Armenia,

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

Andreas Zünd*, President*,
Armen Harutyunyan,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 4414/15) 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 6 December 2014 by an Armenian national, Ms Nelli Fljyan ("the applicant"), who was born in 1949, lived in Yerevan and was represented by Mr K. Mezhlumyan, a lawyer practising in Yerevan;

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 6 February 2025,

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

SUBJECT MATTER OF THE CASE

1. The issue in the case is whether the decision of the Court of Cassation declaring the applicant's appeal on points of law inadmissible as lodged out of time breached her right of access to a court (Article 6 § 1 of the Convention).

2. On 5 August 2013 the applicant initiated civil proceedings in the Kentron and Nork-Marash District Court of Yerevan ("the District Court"), seeking to protect her property rights.

3. On 19 November 2013 the applicant filed written submissions with the District Court. The document was signed by the applicant and indicated that she was represented by a lawyer.

4. On 29 November 2013 the District Court rejected the applicant's claim.

5. On 19 February 2014 the applicant's lawyer lodged an appeal. The document was signed only by the applicant's lawyer.

6. On 25 February 2014 the Civil Court of Appeal decided to admit the appeal for examination and, on 28 February 2014, posted a copy of its admissibility decision to the applicant's lawyer. It then held several hearings. Both the applicant and her lawyer received summons to attend those hearings.

7. On 14 May 2014 the Civil Court of Appeal held its last hearing in the case, at which both the applicant and her lawyer were present. The same day,

the court finished the examination of the appeal and announced that its decision would be pronounced on 21 May 2014.

8. On 21 May 2014 the Civil Court of Appeal pronounced its decision, dismissing the applicant's appeal. The parties were absent from the pronouncement. According to Articles 221.1 and 229 § 1 of the Code of Civil Procedure ("the CCP") in force at the material time, the decision of the Court of Appeal entered into force within one month from the date of pronouncement but was subject to appeal within that period.

9. On the same day the Civil Court of Appeal sent its decision, which was served on the applicant on 24 May 2014, to the applicant's postal address.

10. On 24 June 2014 the applicant's lawyer lodged an appeal on points of law against the decision of 21 May 2014. He also filed a request seeking to restore the one-month time-limit for lodging the appeal on points of law, arguing that the contested decision had not been posted to him, even though it was he who had signed and lodged the appeal. He further explained that, even though the applicant had received the contested decision on 24 May 2014, she had not informed him about it, assuming that it had also been served on him. He had found out that a copy of the decision had been served on the applicant only on 23 June 2014.

11. On 16 July 2014 the Court of Cassation rejected the request to restore the time-limit for filing the appeal on points of law as unfounded and declared the appeal on points of law inadmissible as lodged out of time.

12. On 9 January 2023 Ms Nelli Fljyan died. Her son, Mr Agasi Mirzoyan, who is also the deceased's heir under domestic law, expressed his wish to pursue the application. The Government did not submit any objections. The Court accepts Mr Agasi Mirzoyan's standing before the Court (see *Ghuyumchyan v. Armenia*, no. 53862/07, § 36, 21 January 2016). However, for reasons of convenience, this judgment will continue to refer to Ms Nelli Fljyan as "the applicant", although her son is today to be regarded as having this status.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING LACK OF ACCESS TO THE COURT OF CASSATION

13. The applicant complains under Article 6 § 1 of the Convention that she was deprived of access to the Court of Cassation because of its refusal to examine her appeal on points of law as being out of time, despite the fact that she had missed the appeal time-limit for valid reasons.

14. The Court notes that this 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.

15. The general principles concerning access to a court, including the superior courts, have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-99, 5 April 2018).

16. The Court observes that the applicant's appeal on points of law was left without examination by the Court of Cassation because she had missed the one-month time-limit for appeal. The Court reiterates that the rules governing time-limits for appeals are intended to ensure a proper administration of justice (see *Miragall Escolano and Others v. Spain*, nos. 38366/97 and 9 others, § 36, ECHR 2000-I) and considers that the restriction on the applicant's access to court pursued a legitimate aim. That being so, the rules in question, or their application, should not prevent litigants from using an available remedy (ibid.). It therefore remains to be determined whether the restriction was proportionate to the legitimate aim pursued.

17. The Court observes that under the relevant rules of civil procedure (Articles 221.1 and 229 § 1 of the CCP) the running of the one-month time-limit for lodging an appeal on points of law started from the date of pronouncement rather than the date of service of the decision. The Court has previously held that such a rule in itself is not in violation of Article 6 § 1 of the Convention, provided that it is accompanied by sufficient guarantees enabling the appellants to enjoy effective access to the appeal instance, including by affording them the opportunity to submit well-grounded appeals (see, *mutatis mutandis*, *Mamikonyan v. Armenia*, no. 25083/05, § 30, 16 March 2010). As examples of such guarantees, the Court emphasised the timely service of judicial decisions and the possibility to request the restoration of an appeal time-limit which had been missed for valid reasons (ibid.).

18. In the present case, the Civil Court of Appeal was required (under Articles 124 and 221.2 of the CCP) to post a copy of its decision on the merits to the participants of the proceedings who were absent during the pronouncement at the latest on the following day. On 21 May 2014, that is on the date of the pronouncement, the Civil Court of Appeal posted a copy of its decision to the applicant, who received it on 24 May 2014. The Court notes, however, that no copy of that decision was posted to the applicant's lawyer, even though the applicant was represented by a lawyer who, moreover, had lodged the appeal on her behalf with the Civil Court of Appeal. The applicant argued that, having received a copy of that decision, she did not inform her lawyer, thinking that its copy had been served on him too. By the time her lawyer found out about the service of the decision and was able to lodge an appeal on points of law, the relevant time-limit had already expired.

19. The Court observes that the CCP did not contain any specific rules on correspondence, including on service of judicial decisions, in situations where a party was represented by a lawyer. In particular, the CCP did not specify whether the correspondence was to be served on the party concerned,

his or her lawyer or both of them. Nor does it appear that there was any established practice. Indeed, the conduct of the Civil Court of Appeal was not consistent in this case since, prior to its decision of 21 May 2014, all the communications from that court were served on the applicant's lawyer – alone or together with the applicant (see paragraph 6 above). In such a situation, it was not unreasonable for the applicant to expect that her lawyer would also receive a copy of the Court of Appeal's decision on the merits. She cannot therefore be blamed for the ensuing confusion which resulted in her missing the appeal time-limit, and this omission was mainly attributable to the authorities, namely the lack of clear domestic rules and practice concerning service of documents, coupled with the inconsistent conduct of the Court of Appeal, which created uncertainty for the applicant and her lawyer.

20. The Court observes that the applicant had the possibility to lodge an out-of-time appeal on points of law and to request that the missed time-limit be restored, which the applicant's lawyer did on 24 June 2014. However, the Court of Cassation rejected his request without giving any reasons (see paragraph 11 above). It therefore appears that the Court of Cassation failed to give due consideration to the request.

21. Lastly, the Court is not convinced by the Government's arguments that the applicant's lawyer failed to appear at the pronouncement of the decision of 21 May 2014 or that he could have accessed the full text of that decision on the publicly accessible online judicial database (Datalex). Firstly, the Government did not submit evidence showing the date on which the decision was published on that database. Secondly, nothing suggests that the applicant's lawyer had an obligation to attend the pronouncement or that he was required to monitor the Datalex database and obtain the decision upon its publication, especially considering that the law provided for an automatic service of a copy of the decision, regardless of the reasons for the absence.

22. In the light of the foregoing, the Court considers that the decision of the Court of Cassation of 16 July 2014 declaring the applicant's appeal inadmissible placed a disproportionate restriction on the applicant's effective access to that court.

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

II. REMAINING COMPLAINT UNDER ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant also complains under Article 6 § 1 of the Convention of the breach of her right to adversarial procedure. The Court has examined that part of the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, this complaint does not disclose any appearance of a violation

of the rights and freedoms enshrined in the Convention or the Protocols thereto.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the lack of access to the Court of Cassation admissible and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 6 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Andreas Zünd President