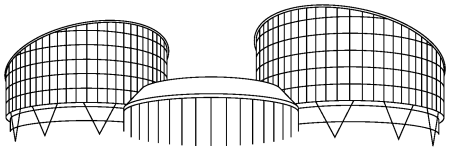

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DNGIKYAN v. ARMENIA

(Application no. 66328/12)

JUDGMENT

STRASBOURG

15 June 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Dngikyan v. Armenia,

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

Aleš Pejchal, *President,*
Armen Harutyunyan,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 23 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 66328/12) 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 an American national, Mr Gevorg Dngikyan ("the applicant"), on 1 October 2012.

2. The applicant was represented by Mr T. Atanesyan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Government of Armenia to the European Court of Human Rights.

3. On 17 April 2014 the complaint, concerning the non-enforcement of judgments in the applicant's favour, was communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Los Angeles.

A. Background to the case

5. The applicant was born in Armenia and grew up in a house in Yerevan which had been built by his grandfather in the 1940s. After the grandfather's death the applicant's uncle lived with his family on the first floor of the house, while the applicant's family lived on the second floor. The entrance to the house is common to the occupants of the first and second floors, and there is a common plot of land adjacent to it.

6. In the 1970s the applicant's uncle sold the first floor of the house to M.G.

7. The applicant later moved to the United States with his father, who died there in 1993, leaving all his property to the applicant.

8. In 1997 the applicant submitted his father's will to a notary in Armenia. The notary then issued a certificate of inheritance and the State Real Estate Registry registered his title in respect of the second floor of the house.

9. In 2003 M.G. sold the first floor of the house to E.T., who registered her title in respect of the first floor. She also obtained the right of common ownership in respect of the adjacent land.

10. It appears that E.T. and her family carried out construction works in the house and on the plot of land adjacent to it, modifying both the house and the surrounding area. They have built and are running a restaurant there.

B. The first set of civil proceedings

11. On an unspecified date the applicant lodged a civil claim against E.T., M.G. and the State Real Estate Registry, seeking to annul E.T.'s title in respect of the first floor and the adjacent land, and to oblige her to demolish the buildings constructed without the permission of the authorities and to restore the stone wall that she had destroyed. E.T. in her turn lodged a counterclaim against the applicant, seeking to annul the will and the subsequent registration of his title as regards the plot of land adjacent to the house.

12. By a judgment of 1 July 2003 the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան* – "the District Court") partially allowed the applicant's claim and dismissed E.T.'s counterclaim.

13. On 22 August 2003 the Civil Court of Appeal (*ՀՀ քաղաքացիական գործերով վերաքննիչ դատարան*) re-examined the case on the merits. It granted the applicant's claims in their entirety and rejected E.T.'s counterclaim.

14. E.T. subsequently lodged an appeal on points of law against the judgment of the Civil Court of Appeal.

15. On 24 October 2003 the Civil and Economic Chamber of the Court of Cassation (*ՀՀ վճռաբեկ դատարանի քաղաքացիական և տնտեսական գործերի պալատ*) dismissed E.T.'s appeal on points of law and upheld the judgment of the Court of Appeal. The judgment of 22 August 2003 thereby became final and binding and a writ of execution was issued in this respect.

16. On 4 December 2003 enforcement proceedings were instituted by the Department for the Enforcement of Judicial Acts (*Դատական ակտերի հարկադիր կատարման ծառայություն* – "the DEJA").

17. Thereafter the head of the Kentron division of the State Real Estate Registry (*Անշարժ գույքի կադաստրի պետական կոմիտեի Կենտրոն տարածքային ստորաբաժանում*) requested the Civil Court of Appeal to clarify the judgment of 22 August 2003.

18. On 22 October 2004 the Civil Court of Appeal issued a clarification of the above-mentioned judgment. It stated, in particular, that the title to the plot of land adjacent to the house was to be registered in the applicant's name. This decision became final and was also submitted for enforcement.

C. The second set of civil proceedings

19. On 11 April 2006 the applicant lodged a civil claim against the Kentron division of the State Real Estate Registry, the DEJA and E.T., seeking to oblige the Kentron division of the Real Estate Registry to comply with the requirements of the judgment of the Court of Appeal of 22 August 2003 and the decision of 22 October 2004 concerning its clarification, to evict E.T. and other persons who were unlawfully occupying his property, and to terminate the activities of the restaurant situated therein.

20. By the judgment of 28 August 2006 the District Court allowed the applicant's claim in its entirety. It stated, in particular, that the applicant's title was to be registered in respect of the plot of land adjacent to the house and the constructions situated therein, that E.T. and the other persons occupying the applicant's property were to be evicted, and that these persons should terminate the activities of the restaurant.

21. After an appeal lodged by E.T. on 22 December 2006 the Civil Court of Appeal re-examined the case and allowed the applicant's claim. In doing so, it stated that the judgment of 22 August 2003 and the decision of 22 October 2004 had not yet been enforced since the applicant's title had not been registered and the constructions had not been demolished. The Court of Appeal went on to state that the non-enforcement of the above-mentioned judicial acts was in violation of Article 6 of the Convention and Article 1 of Protocol No. 1 in that the applicant's right to peaceful enjoyment of his possessions was being violated by the illegal occupation of his property by E.T. without the applicant's permission. This judgment became final and binding on the day of its delivery and on 26 January 2007 enforcement proceedings were instituted in its respect.

D. The enforcement proceedings

22. Since 2003 a number of decisions have been made by the bailiffs in respect of obliging E.T. to comply with the requirements of the judgment in the applicant's favour within certain time-limits. However, each time E.T. has failed to comply with these decisions, for which failure the bailiffs have each time imposed a fine. It appears that she has also failed to pay the fines.

23. In 2005 enforcement activities were postponed on the grounds that various measures applied in respect of E.T. had been ineffective in view of the fact that the DEJA needed to suspend the proceedings in order to conclude a contract with a construction company, given the absence of technical equipment necessary for conducting the compulsory construction works. It appears that at some point the proceedings were resumed.

24. By a letter of 25 December 2008 the Minister of Justice informed the applicant's lawyer that the Kentron division of the State Real Estate Registry had justified the non-registration of the applicant's title in respect of his property by pointing to the fact that the constructions situated therein had not been demolished because the DEJA did not have the appropriate technical equipment and workforce at its disposal.

25. It appears that until 2010 other measures were initiated by the DEJA, such as obliging the Kentron division of the State Real Estate Registry to perform the registration of the applicant's title, in accordance with the judgments in his favour, and setting new time-limits for E.T. to comply with her obligations. However, it appears that these measures did not lead to the full enforcement of the judicial acts in question.

E. The criminal proceedings

26. On an unspecified date the applicant applied to the General Prosecutor's Office (*ՀՀ գլխավոր դատախազություն*), seeking to have criminal proceedings instituted against those responsible for not enforcing the judicial acts in question. His request was refused.

27. Following a complaint lodged by the applicant, on 3 July 2007 the District Court annulled the decision of the General Prosecutor's Office to refuse to institute criminal proceedings, on the grounds that the investigator had not taken proper action to verify whether the bailiffs had carried out their duties properly with a view to securing the enforcement of the above-mentioned judicial acts in favour of the applicant. As a result, criminal proceedings were instituted against the bailiffs and officials of the Kentron division of the State Real Estate Registry.

28. On 26 December 2007 the investigator terminated the proceedings on the grounds that the judicial acts in question had not – for objectively justifiable reasons – been enforced.

29. On 25 February 2008 the District Court annulled the investigator's decision of 26 December 2007, stating, *inter alia*, that the investigator had failed to determine why for more than four years E.T. and other persons had not been evicted, the constructions on the applicant's property had not been demolished, and the activities of the restaurant had not been terminated – even after E.T. had been fined for not complying with the requirements of the judicial acts in question.

30. The prosecutor appealed against the above-mentioned decision of the District Court.

31. On 28 April 2008 the Criminal Court of Appeal (*ՀՀ վերաքննիչ քրեական դատարան*) upheld the decision of 25 February 2008. As a result, the criminal proceedings were resumed on 14 May 2008.

32. Thereafter, the criminal proceedings were again terminated three times, namely on 14 June 2008, 17 July 2009 and 23 April 2010. The first two termination decisions were successfully challenged by the applicant at two levels of jurisdiction, following which the criminal proceedings were re-opened on the orders of those courts. As for the final decision by which the proceedings were once again terminated, the applicant lodged a complaint with the General Prosecutor's Office, but his complaint was rejected for failure to comply with the time-limits for lodging an application for supervisory review. According to the applicant, he did not pursue this last complaint any further.

33. According to the latest information received from the applicant, the enforcement proceedings were closed on 5 September 2016 because the enforcement of the judgments was impossible. The judgments of the Civil Court of Appeal of 22 August 2003 and 22 December 2006, as well as the decision of 22 October 2004, therefore remain unenforced today.

II. RELEVANT DOMESTIC LAW

A. The Code of Civil Procedure (in force from 1999)

34. Under Article 14, a final judicial act is binding upon all State entities, local self-government bodies, and their respective officials, legal entities and citizens, and is subject to execution within the entire territory of the Republic of Armenia.

B. The Law on the Enforcement of Judicial Acts (in force from 1 January 1999)

35. Under Article 62, having instituted enforcement proceedings on the basis of a writ of execution obliging the judgment debtor to carry out or refrain from carrying out certain activities, the bailiff sets a time-limit for the debtor to comply with his obligations.

36. Where the judgment debtor does not comply with his obligations within the set time-limit, the bailiff ensures the enforcement of the writ of execution by seizing from the debtor three times the amount of the enforcement costs incurred.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

37. The applicant complained about the continuous non-enforcement of the final judgments of 22 August 2003 and 22 December 2006. He relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which, in so far as relevant, read as follows:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of Protocol No. 1

"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."

38. The Government contested that argument.

A. Admissibility

39. The Court notes that the application 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

1. The parties' submissions

(a) The applicant

40. The applicant disputed the Government's statement that the execution measures had been partially implemented, pointing out that E.T. had never been removed from the premises and that the restaurant in question was still in operation. Their references to a lack of manpower and appropriate technical equipment had been only excuses for not proceeding with the execution. He pointed out that under Armenian law court execution orders were to be executed at the debtor's expense. The applicant had

already paid 17,000 United States dollars (USD) to the DEJA. He did not have any legal duty to provide the DEJA with manpower and/or appropriate technical equipment or to take upon himself the execution obligations of the DEJA.

41. The applicant argued that Armenian law did not require that unauthorised buildings be demolished before the relevant property title could be duly registered; in any case, plots containing unauthorised buildings could still be registered as a plot of land. There had never been any negligence on the applicant's part as far as registration of the plot was concerned. The registration obligation lay with the DEJA. The applicant had requested several times that criminal proceedings be initiated against the relevant civil servants but the investigative authorities had terminated the criminal prosecution four times; the courts had annulled three of those termination decisions.

(b) The Government

42. The Government argued that the judgments in the applicant's favour had been partly executed: E.T.'s property title had been invalidated and her ownership certificate had been declared void; USD 17,000 had been exacted from the applicant and placed in the DEJA's bank account; E.T. had been evicted from the land; and the operation of the restaurant had been terminated. During the whole of the enforcement proceedings, the DEJA had taken all possible steps to enforce the Court of Appeal's judgments, but for objective and substantial reasons it had been impossible to complete the enforcement.

43. The applicant's ownership of the land in question could be registered only after the demolition of the existing constructions and only after he actually requested such registration. The DEJA had requested the municipality of Yerevan to provide technical equipment with which to conduct the compulsory demolition works, and similar requests had also been made to private construction companies, but in vain. The applicant had even been requested to provide a labour force and machinery for the demolition works or, alternatively, to deposit with the DEJA advance payment of the whole of the demolition expenses, but he had refused to do so. Moreover, the bailiffs had several times imposed fines on E.T. All necessary and sufficient measures had thus been taken to try to ensure the execution of the final judgments. Accordingly, there had been no violation of Article 6 § 1 or Article 1 of Protocol No. 1 to the Convention.

2. The Court's assessment

44. The right to a court protected by Article 6 would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions*

1997-II). Effective access to a court includes the right to have a court decision enforced without undue delay.

45. In the same context, the impossibility for an applicant to obtain the execution of a judgment in his or her favour in due time constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Voytenko v. Ukraine*, no. 18966/02, § 53, 29 June 2004). An unreasonably long delay in the enforcement of a binding judgment may therefore breach the Convention (see *Burdov v. Russia*, no. 59498/00, ECHR 2002-III; *Burdov v. Russia (no. 2)*, no. 33509/04, § 65, ECHR 2009; and *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 50-53, 15 October 2009).

46. Turning to the circumstances of the present case, the Court observes that by a judgment of 22 August 2003, the Civil Court of Appeal granted the applicant's claims in their entirety. It furthermore observes that on 24 October 2003 the judgment of 22 August 2003 became final and a writ of execution was issued in its respect and that on 4 December 2003 enforcement proceedings were instituted by the DEJA. On 22 October 2004 the Civil Court of Appeal issued a clarification of the judgment of 22 August 2003 that had been in the applicant's favour, and this decision was also submitted for enforcement.

47. Since no effective enforcement measures were taken, in April 2006 the applicant instituted a new set of civil proceedings against the Real Estate Registry, the DEJA and E.T., seeking (i) to oblige the Real Estate Registry to comply with the requirements stipulated in the judgment of the Court of Appeal of 22 August 2003, (ii) to evict E.T., and (iii) to terminate the activities of the restaurant situated on the property. His claim was allowed in its entirety by the Civil Court of Appeal in its judgment of 22 December 2006, which then became final. The court confirmed that the judgment of 22 August 2003 had not been enforced yet, finding that this non-enforcement was in violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention (see paragraphs 19 and 21 above).

48. Since December 2003, numerous execution measures were taken by the DEJA, all to no effect. On 5 September 2016 the enforcement proceedings were closed due to the fact that the enforcement of the final judgments remained impossible (see paragraphs 22 and 33 above).

49. Consequently, the final judgments of 22 August 2003 and 22 December 2006, as well as the final decision of 22 October 2004 – all in the applicant's favour – remain unenforced today. The non-enforcement of those domestic judgments has therefore lasted for over thirteen years and four months. The Government have failed to advance any argument to justify that delay. The Court therefore finds that the Armenian authorities, by failing for several years to take the necessary measures to comply with the final judgments, have deprived the provisions of Article 6 § 1 of all

useful effect in the present case and that, in the light of the fact that the applicant's property claims have remained unexecuted for an unreasonably long time, they have failed to respect his rights under Article 1 of Protocol No. 1 to the Convention (see *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, §§ 56-57, 15 October 2009; and *Memishaj v. Albania*, no. 40430/08, § 33, 25 March 2014).

50. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 107,000 euros (EUR) in respect of pecuniary damage and EUR 150,000 in respect of non-pecuniary damage.

53. The Government argued that the applicant had not submitted any relevant documents to prove the value of the pecuniary damage suffered and that his claim should therefore be rejected. In any event, there was no causal link between the alleged violation and the claimed pecuniary damage. As to the non-pecuniary damage, the Government considered that this claim was not supported either by relevant documents. In any event, the amount claimed in respect of non-pecuniary damage was excessive and should be rejected.

54. The Court agrees with the Government that the applicant has failed to provide any documents supporting his claim in respect of pecuniary damage. It therefore rejects that claim. On the other hand, it finds that the applicant has suffered a certain amount of non-pecuniary damage as a result of the violation found. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicant also claimed EUR 26,000 for the costs and expenses incurred before the domestic courts, as well as for those incurred before the Court.

56. The Government argued that the applicant had not submitted any relevant documents proving that his counsel's fees had been paid and to

substantiate his claims, in accordance with Rule 60 of the Rules of Court. His claim for costs and expenses should therefore be rejected.

57. Regard being had to the documents in its possession and its case-law, the Court rejects the applicant's claim for costs and expenses for lack of any supporting documents.

C. Default interest

58. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

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

Done in English, and notified in writing on 15 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Aleš Pejchal
Deputy Registrar	President