

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

FIRST SECTION

CASE OF NIKOGHOSYAN v. ARMENIA

(Application no. 75651/11)

JUDGMENT

STRASBOURG

18 May 2017

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



In the case of Nikoghosyan v. Armenia,

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

Ledi Bianku, *President,*
Armen Harutyunyan,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 25 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 75651/11) 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 Armenian national, Mr Robert Nikoghosyan ("the applicant"), on 3 December 2011.

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

3. On 11 September 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Yerevan.

5. The applicant is a former employee of a State Revenue Committee (hereinafter "the Committee"). By an order of the Head of the Committee of 27 February 2009 the applicant was dismissed from his job.

A. Civil proceedings

6. On 20 March 2009 the applicant brought an action against the Committee, requesting reinstatement in his job and payment for forced absence up to the day of his reinstatement.

7. On 11 August 2009 the Kentron and Nork-Marash District Court of Yerevan found in the applicant's favour. In particular, it decided to declare

the order of 27 February 2009 void. Moreover, it ordered the applicant's reinstatement in his previous position and awarded him compensation for lost earnings.

8. On 2 September 2009 the Committee appealed against the District Court's judgment. By a decision of 7 October 2009 the Civil Court of Appeal rejected the appeal and upheld the District Court's judgment.

9. On 2 November 2009 the Committee lodged an appeal on points of law against the decision of 7 October 2009 with the Court of Cassation.

10. On 9 December 2009 the Court of Cassation decided to declare the appeal inadmissible for lack of merit, so the judgment of 11 August 2009 became final.

B. Enforcement proceedings

11. On 27 January 2010 the Kentron and Nork-Marash District Court of Yerevan issued a writ of execution in respect of its judgment of 11 August 2009.

12. On 5 February 2010 the bailiff instituted enforcement proceedings. On the same date he decided to oblige the Committee to comply with the requirements of the writ within two weeks.

13. By a letter dated 11 February 2010 the bailiff requested that the Committee comply with the requirements of the writ.

14. On 23 March 2010 the bailiff received a response from the Committee, stating that it was impossible to reinstate the applicant in his job, since the structure of the Committee had been modified and the applicant's former position did not exist anymore.

15. On 20 April 2010 the applicant was paid 937,114 Armenian drams (AMD) for his forced absence, calculated from 27 February 2009 until 9 December 2009, the date on which the judgment in his favour became final.

16. The applicant sent several letters to the Committee and to different officials, complaining that no measures had been taken to enforce the final judgment of 11 August 2009 and requesting that the Committee be compelled to comply with that judgment.

17. On 18 July 2011 the bailiff decided to terminate the enforcement proceedings on the grounds that it was impossible to enforce the judgment of 11 August 2009. In particular, the applicant could not be reinstated because his previous position was no longer vacant.

18. On 25 July 2011 the applicant contested the bailiff's decision before the Administrative Court.

19. On 5 December 2011 the Administrative Court found in favour of the applicant and cancelled the bailiff's decision of 18 July 2011.

20. On 20 January 2012 the supervising bailiff decided to set aside the bailiff's decision of 18 July 2011 and reopen the enforcement proceedings.

21. By a letter dated 5 March 2012 the bailiff again requested that the Committee reinstate the applicant in his previous position and award him compensation for lost earnings until the date of his reinstatement. The Committee replied that the applicant's former position had ceased to exist as a result of the Governmental decree of 15 December 2011.

22. On 26 April 2012 the bailiff again decided to terminate the enforcement proceedings on the grounds that it was impossible to enforce the judgment of 11 August 2009, since the structural unit of the Committee where the applicant had been working had ceased to exist.

23. On 7 May 2012 the applicant contested that decision before the Administrative Court. He alleged, in particular, that the judgment of 11 August 2009 had not been enforced: firstly, he had not been awarded the full sum for his forced absence, and secondly, he had not been reinstated in his previous position.

24. By a judgment of 16 October 2012 the Administrative Court decided to grant the applicant's claim in respect of the payments for his forced absence, stating that the period should be calculated up to 15 December 2011, the day on which that particular unit of the Committee had ceased to exist. As to the applicant's second claim, the Administrative Court stated that the bailiff's decision in this respect was lawful, since the applicant's reinstatement had been impossible.

25. On 9 November 2012 the applicant lodged an appeal against the judgment of the Administrative Court.

26. On 21 February 2013 the Administrative Court of Appeal dismissed the applicant's claim and upheld the Administrative Court's decision of 16 October 2012.

27. On 11 March 2013 the applicant lodged an appeal on points of law against the decision of 21 February 2013 with the Court of Cassation.

28. On 27 March 2013 the Court of Cassation decided to declare the appeal inadmissible for lack of merit.

C. Subsequent proceedings

29. On 19 April 2013 the bailiff decided to reopen the enforcement proceedings.

30. On 4 November 2013 the applicant was invited to the Committee and the Committee made him a verbal offer of a similar position in another tax inspectorate unit, but this offer was later turned down by the applicant.

31. Three days later, via telephone, the applicant was again invited to the Committee, but he failed to appear.

32. On 8 November 2013 the Head of the Human Resources Department of the Committee sent a letter to the applicant, offering to reinstate him in a position similar to his previous one, that is, the position of a tax inspector in Current Control Division no. 2 of the Shengavit Tax Inspectorate. The letter

also stated that the compensation for the applicant's forced absence up to that date amounted to AMD 4,017,860.

33. On the same day the applicant refused to accept the Committee's offer. He claimed that the compensation for his forced absence should amount to AMD 9,975,970. In response, the Committee informed the applicant that it would consider the above-mentioned sum if the applicant submitted substantiating calculations.

34. On 9 June 2015 the amount of AMD 4,017,860 was transferred by the Committee to the bailiff's account. On 18 June 2015 the enforcement proceedings were terminated by the bailiff as this amount had been further transferred to the applicant's bank account.

35. On 22 July 2015 the applicant appealed to the Administrative Court, requesting that the bailiff's decision be quashed.

36. On 22 May 2016 the Administrative Court allowed the applicant's appeal and quashed the bailiff's decision of 18 June 2015. That judgment became final on 26 May 2016.

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure

37. According to Article 14 of the Code of Civil Procedure, a judicial act which has come into effect is mandatory for all State bodies, local self-government bodies, their officials, legal entities and citizens, and is subject to execution throughout the territory of the Republic of Armenia.

B. Law on Compulsory Enforcement of Judicial Acts

38. The relevant parts of the Law on Compulsory Enforcement of Judicial Acts, as in force at the relevant time, provide:

Article 3: Bodies ensuring the compulsory enforcement of judicial acts

"1. The compulsory enforcement of judicial acts in the Republic of Armenia shall be ensured by the Compulsory Enforcement Service acting within the structure of the Ministry of Justice of the Republic of Armenia."

Article 41: The termination of enforcement proceedings

"1. A bailiff terminates enforcement proceedings if:

...

8) During enforcement proceedings not relating to property, the execution of a judicial act has become impossible."

Article 71: Mandatory nature of bailiff's decisions

"Decisions taken by bailiffs within the scope of their competence shall be binding on all State bodies, local self-government bodies, officials, organisations and citizens, and shall be subject to execution throughout the territory of the Republic of Armenia."

THE LAW

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

39. The applicant complained regarding the non-enforcement of the Kentron and Nork-Marash District Court's judgment of 11 August 2009, relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, which read:

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."

40. The Government contested that argument.

A. Admissibility

1. The Government's preliminary objections

41. The Government submitted that, according to the applicant, the six-month time-limit should be calculated from the bailiff's decision of 18 July 2011. However, a number of sets of proceedings to ensure the enforcement of the District Court's judgment had been dealt with after the lodging of the present application with the Court. Only two days after the lodging of the application the Administrative Court had ruled in the applicant's favour, the bailiff's decision had been set aside, and the enforcement proceedings had been reopened.

42. Consequently, the Government argued that the application was premature since the applicant had failed to exhaust the domestic remedies in respect of the execution of the District Court's judgment of 11 August 2009 before lodging his application with the Court. These remedies, which were available to the applicant, were effective. Despite their effectiveness and availability, the applicant had not made any steps to challenge the bailiff's decision on the termination of the enforcement proceedings before the domestic courts. Thus, the domestic courts had had no opportunity to address the issue of an alleged violation of the applicant's rights and afford possible redress in that regard. The applicant had therefore failed to comply with Article 35 § 1 of the Convention.

43. The applicant argued that he had exhausted all possible remedies capable of providing redress. He had challenged the bailiff's decision on the termination of the enforcement proceedings before the Administrative Court. The Government had failed to explain how the return of the writ of execution to the District Court could have provided redress for the non-enforcement issue. Even if he had obtained a judgment favourable to him, it would only have meant having another writ of execution to enforce. Moreover, the applicant pointed out that another position would not have been offered to him had he not lodged an application with the Court which was then communicated to the Government.

2. The Court's assessment

44. The Court notes that the present application was lodged with the Court on 3 December 2011. At that time the applicant's appeal against the bailiff's decision of 18 July 2011 to terminate the enforcement proceedings was still pending before the Administrative Court. That appeal must be considered "effective" for the purposes of Article 35 § 1, since on 5 December 2011 the Administrative Court found in his favour and cancelled the bailiff's decision of 18 July 2011 (see paragraph 19 above). The fact that there might have been several other remedies to challenge the bailiff's decision does not mean that the applicant failed to exhaust domestic remedies. The Government's preliminary objection must therefore be rejected.

45. The Court therefore notes that this complaint 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

46. The applicant argued that the domestic authorities had not undertaken all necessary measures to enforce the District Court judgment, since to date he had not been reinstated and part of the compensation for his forced absence still remained unpaid. After the period of non-execution of the judgment, lasting over five years, he had been offered a new position on 8 November 2013, on the basis that he withdraw his application from the Court. He had refused to accept it, since the offer had not been made properly, but only with a view to misleading him and the Court. From the District Court judgment of 11 August 2009 it appeared that, after the applicant had been dismissed from his job on the grounds of staff cutbacks, the Committee had announced two vacant posts in the same unit.

47. The Administrative Court had confirmed in its judgment of 5 December 2011 that the bailiff could have undertaken a number of other measures which would have resulted in the enforcement of the judgment, and that the Committee had had an opportunity to reinstate the applicant in his previous position after the judgment of 11 August 2009 had become final on 9 December 2009. Even if he could not have been reinstated in his previous post, or if no other post had been vacant, the Committee had been obliged to offer him a similar position, but it had intentionally not done so. Reinstatement had never been impossible, nor had there been any need to create new positions to enforce the judgment. On the contrary, the bailiff could have, *inter alia*, obliged the Committee to comply, set a deadline for doing so, or imposed a fine on the Committee for the failure to comply with the enforcement measures.

48. As to the compensation, the applicant claimed that he should be compensated for his forced absence until 8 November 2013, the date when it had become impossible to enforce the judgment of 11 August 2009, compensation amounting to AMD 10,506,871. There had thus been a violation of his rights guaranteed under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

(b) The Government

49. The Government argued that the domestic authorities had undertaken all necessary measures to enforce the binding judgment. The applicant had been dismissed from his job because of the necessity to reduce the number of employees connected with production needs, which, within the domestic law, had been a lawful basis for terminating an employment contract. Once the writ on execution had been presented to the Compulsory Enforcement Service, the bailiff had immediately instituted enforcement proceedings and

requested that the Committee comply with the requirements of the judgment. However, it had been impossible to reinstate the applicant in his previous job, since the structure of the Committee had been modified and the applicant's position no longer existed. This had been the main reason for the failure to reinstate the applicant in his previous position. Even assuming that there could have been such positions within the structure of the Committee, it would still have been impossible to enforce the judgment, since these positions had not been vacant. Even in this situation, the domestic courts had set aside the bailiff's decision to terminate the enforcement proceedings and had requested that the bailiff reopen those proceedings. After reopening the enforcement proceedings the bailiff had again requested that the Committee comply with the District Court's judgment, but the Committee had still found this impossible. It had only been after the reply by the Committee to this effect that the Administrative Court had left the bailiff's decision in force. In the meantime, the Administrative Court had decided, by its decision of 16 October 2012, that the applicant's forced absence should be calculated up to 15 December 2011, the day on which the Kanaker-Zeytun Tax Inspectorate had ceased to exist.

50. The Government maintained that the Court should not put employers under an obligation of factual enforcement which was objectively impossible. Otherwise, employers would be forced to make additional commitments, namely to create new structural units and new positions. The creation of such obligations would amount to violations of employers' constitutional rights and lead to restrictions on their legal rights. The circumstances of the present case should be taken into account when assessing the duration of the enforcement proceedings, since, during those proceedings, the responsible State body, the Compulsory Enforcement Service, had taken all possible steps towards enforcing the District Court's judgment. It was only because of objective and substantial facts that the enforcement of the judgment had been impossible. Moreover, the Government emphasised that the applicant had been offered another position similar to his previous position, both verbally and by letter, but he had not accepted these offers. The reasons why the applicant had refused these offers were not relevant. The question of the applicant's reinstatement in his previous job could have been resolved had he accepted the Committee's offer. The failure to enforce the District Court's judgment had, in fact, also been caused by the applicant's unwillingness to have the judgment enforced.

51. Concerning the alleged violation of Article 1 of Protocol No. 1 to the Convention, the Government asserted that on 20 April 2010 the applicant had been paid AMD 937,114 for his forced absence. As to the remaining part of the necessary payment, the delay in the payment had been connected to the wording of the District Court's judgment, since that judgment ordered

that the relevant period be calculated up to the very date of the applicant's reinstatement. As this question had been before the domestic courts for a long time, the specific amount of money to be paid had remained uncertain for a long time. In the letter of the Committee of 8 November 2013, the Committee had expressed its wish to pay the whole sum for the applicant's forced absence. However, by declining the Committee's offer to reinstate him in a position similar to his previous one, the applicant had clearly intended to extend the period of time for which he could receive compensation, and had therefore also indirectly blocked the enforcement of the judgment of the District Court in respect of that part of the payment. Moreover, although the Administrative Court had held in its judgment of 16 October 2012 that the period for the applicant's forced absence should be calculated up to 15 December 2011, and that the sum for this period amounted to AMD 4,017,860, the Committee had expressed its readiness to consider the possibility of awarding the applicant the AMD 9,975,970 claimed if he submitted any substantiating calculations.

52. Therefore, in the Government's view, the Compulsory Enforcement Service and the Committee had had no intention of delaying the execution of the judgment in the applicant's favour. On the contrary, they had done their best to ensure the execution of the District Court's judgment, and had expressed their willingness to award him generous compensation when it had become objectively impossible to reinstate him in his previous position. The possibility to impose a fine only applied to situations where there was an intentional refusal to comply with the orders of the bailiff, which had not been the case here. There had thus been no violation of the applicant's rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

2. The Court's assessment

53. 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). The effective access to court includes the right to have a court decision enforced without undue delay.

54. 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).

55. Turning to the circumstances of the present case, the Court observes that, by the judgment of 11 August 2009, which became final on 9 December 2009, the District Court found in favour of the applicant. On 27 January 2010 the District Court issued a writ of execution in respect of that judgment. In February 2010 the bailiff instituted the relevant enforcement proceedings, ordering the Committee to comply with the requirements of the writ within two weeks. The applicant was paid AMD 937,114 for his forced absence, calculated from 27 February 2009 until 9 December 2009, the date on which the judgment became final (see paragraphs 11 and 15 above). In March 2010 the Committee informed the bailiff that the applicant's reinstatement was not possible. In consequence, on 18 July 2011, the bailiff decided to terminate the enforcement proceedings on these grounds. However, that decision was quashed by the Administrative Court on 5 December 2011. The bailiff's second decision to terminate the enforcement proceedings was upheld by the Administrative Court on 16 October 2012, and that decision became final on 27 March 2013 (see paragraphs 17-19, 24 and 28 above). On 8November 2013 the Committee offered to reinstate the applicant in a position similar to his previous one, but he refused the offer. In June 2015 the applicant was paid an additional AMD 4,017,860 as compensation (see paragraphs 32-34 above).

56. The Court notes that the parties seem to agree that the District Court judgment of 11 August 2009 remained unenforced for several years: the Committee only offered to reinstate the applicant in a post similar to his previous one on 8 November 2013, and he was paid the major part of the compensation for his forced absence in June 2015. The enforcement proceedings were thus only terminated after the application had been communicated to the Government on 17 November 2011.

57. The judgment of 11 August 2009, which was favourable to the applicant, remained unenforced from March 2010 until June 2015, that is, for almost five 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 to take the necessary measures to comply with the final judgments for several years, deprived the provisions of Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention of all useful effect in the present case.

58. Accordingly, there has 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

59. 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

60. The applicant claimed AMD 10,988,323 in respect of pecuniary damage and 385,000 euros (EUR) in respect of non-pecuniary damage.

61. As to pecuniary damage, the Government submitted that the applicant had failed to provide any proof of the pecuniary damage suffered. Moreover, the issue would have been solved had the applicant accepted the reinstatement offered on 8 November 2013. His claim in respect of pecuniary damage was thus groundless and exaggerated and should be rejected. With regard to non-pecuniary damage, the Government asserted that the applicant's claim should be rejected, as he had failed to present any evidence proving that he had suffered any distress, anxiety or frustration. In any event, the amount claimed for non-enforcement of the judgment of 11 August 2009, namely AMD 190,000, was excessive. As to the rest of the claim in respect of non-pecuniary damage, the Government argued that this was not related to the present case and should therefore be rejected.

62. The Court agrees with the Government that there is no longer any outstanding compensation for pecuniary damage owed to the applicant, as this has already been paid to him. It therefore rejects the applicant's claim in respect of pecuniary damage. 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

63. The applicant also claimed AMD 950,000 for costs and expenses incurred both before the domestic courts and the Court.

64. The Government submitted that the applicant had failed to provide proof of any costs and expenses incurred before the domestic courts. As to costs and expenses incurred before the Court, no itemised invoices had been provided by the applicant. In any event, the amounts claimed for legal fees and postal expenses were excessive.

65. 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 itemisation.

C. Default interest

66. 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 18 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Ledi Bianku
Deputy Registrar	President