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

FIFTH SECTION

DECISION

Application no. 31585/21
Maka KARTVELISHVILI
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 5 September 2024 as a Committee composed of:

Mykola Gnatovskyy*, President*,
Lado Chanturia,
Úna Ní Raifeartaigh*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 31585/21) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 June 2021 by a Georgian national, Ms Maka Kartvelishvili ("the applicant"), who was born in 1972, lives in Tbilisi and was represented by Mr A. Merebashvili, a lawyer practising in Tbilisi;

the decision to give notice of the complaint under Article 6 § 1 of the Convention concerning the alleged lack of access to a court to the Georgian Government ("the Government"), represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns an appellate court's refusal to examine the merits of the applicant's appeal due to her failure to pay the court fee for processing it. The applicant alleged a breach of her right of access to a court under Article 6 § 1 of the Convention.

2. In 2015 the applicant instituted civil proceedings against several respondents. She requested that the latter acknowledge legal obligations owed

to her, and that she be declared owner of a certain property. The applicant set the value of her claim at 360,000 Georgian laris (GEL, approximately 124,200 euros (EUR)) and paid the relevant court fee of 3,000 Georgian laris (GEL, approximately EUR 1,035).

3. On 26 February 2019 the Tbilisi City Court delivered a judgment dismissing the applicant's claims. Among other things, the court found that the validity of the legal obligations set out in the contract relied on by her had been conditional upon the joint fulfilment of certain obligations by the applicant and five other signatories who had not been part of the proceedings instituted by her. Among other elements, the court found that the applicant had failed to fulfil the relevant obligations. Accordingly, there had been no basis to grant her claims. The judgment also referred to an apparently analogous case in which a similar claim had been dismissed.

4. On 10 April 2019 the applicant lodged an appeal with the Tbilisi Court of Appeal.

5. On 22 April 2019 the appeal was found procedurally deficient due to the applicant's failure to pay the court fee for its processing. The applicant was requested to pay the fee of GEL 5,000 (approximately EUR 1,725). She was given ten days to either pay the fee or to present "reliable evidence" of her inability to do so (the decision was served on 26 July 2019). The fee was calculated based on Article 39 of the Code of Civil Procedure according to which at an appellate stage a claimant was to pay a court fee amounting to 4% of the value of the dispute, capped at GEL 5,000. An individual claimant's financial situation was, according to the law, one of the grounds for the courts to grant a deferral of the payment, a reduction of the fee, or an exemption from paying it.

6. On 12 August 2019 the applicant submitted a certificate of employment indicating that her salary as a school teacher had been GEL 405 (approximately EUR 140). She stated that she could not afford the payment of the fee of GEL 5,000 due to economic hardship, and requested to have the payment deferred to the end of the proceedings or to be given additional time to pay the fee.

7. On 2 September 2019 the deferral request was rejected on the grounds that the applicant's salary certificate had not been sufficient evidence to demonstrate that she had been unable to afford the payment. The court noted that it had been for the party requesting the deferral to prove the circumstances referred to in the request. The applicant was, therefore, requested to present "either reliable (უტყუარი) items of evidence proving her difficult financial situation ... or a proof of payment of ... GEL 5,000." The applicant was given ten days to correct the procedural defect. She was warned that the appeal would have been left unexamined in case of her failure to pay.

8. On 26 February 2020 the applicant paid GEL 200 and asked to be exempted from paying the remainder of the fee. She repeated the content of

her application of 12 August 2019 regarding her alleged inability to pay the remaining sum (see paragraph 6 above).

9. On 2 March 2020 the Tbilisi Court of Appeal rejected the request stating that the applicant had failed to provide any new items of evidence to substantiate it. She was ordered to pay the court fee in seven days' time.

10. On 29 April 2020 the applicant requested the appellate court to extend the time-limit for paying the court fee until 1 July 2020.

11. On 20 May 2020 the Tbilisi Court of Appeal granted the request in part and postponed the payment by ten days.

12. On 10 July 2020 the Tbilisi Court of Appeal declared the applicant's appeal inadmissible, without examining it on the merits, owing to her failure to pay the court fee. It noted that the decision of 20 May 2020 (see the previous paragraph) had been duly served on the applicant's representative and the time-limit indicated in that decision had expired on 1 June 2020. However, the representative had neither presented proof of payment of the court fee nor had he made any submissions in that respect. The court also noted the multiple instances between 22 April 2019 until 20 May 2020 on which the time-limit for the payment of the fee had been extended and the fact that the applicant had been warned regarding the consequences of her failure to pay.

13. On 7 August 2020 the applicant lodged an interlocutory appeal with the Supreme Court.

14. On 4 December 2020 the Supreme Court rejected the appeal. It referred to the multiple extensions of the time-limit granted by the appellate court (see paragraphs 5-11 above) and found that the applicant had effectively been afforded approximately a year and three months to pay the court fee. It also stated that in her applications submitted to the appellate court the applicant had failed to submit reliable evidence regarding her inability to pay the fee. In this respect, the Supreme Court stressed that the civil proceedings were adversarial and it had been for the applicant to present persuading evidence before the courts. Finally, the cassation court referred to the fact that the time-limit imposed on the applicant on 20 May 2020 had expired and she had neither presented proof of payment of the court fee nor had she made any submissions in that respect. Referring to these circumstances and taking note of the right of access to a court within the meaning of Article 6 of the Convention, the Supreme Court found that the appellate court's decision taken on 10 July 2020 had been compliant with domestic law and practice, and the resulting restriction on the applicant's right of access to a court had not, in the circumstances, been unlawful or disproportionate.

THE COURT'S ASSESSMENT

15. The applicant complained that there had been a breach of her right of access to a court, within the meaning of Article 6 § 1 of the Convention, on

account of the appellate court's refusal to examine her appeal due to her failure to pay the court fee.

16. The Government objected, stating that the application was inadmissible for being manifestly ill-founded in that (a) the civil proceedings instituted by the applicant had had no prospect of success; (b) the applicant had been afforded a year and three months to pay the court fee; (c) the applicant's ultimate application regarding the court fee had only contained a request to be given additional time to pay the court fee which had been partly granted on 20 May 2020; and (d) her complaint regarding the right of access to a court had been addressed by appellate and supreme courts which had found it to have been unsubstantiated. The applicant disagreed.

17. The general principles concerning the right of access to a court have been summarized in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-78, 5 April 2018); *Weissman and Others v. Romania* (no. 63945/00, §§ 33-37, ECHR 2006-VII (extracts)); and *Kreuz v. Poland* (no. 28249/95, §§ 52-57, ECHR 2001-VI).

18. Turning to the present case, the Court observes that the court fee was calculated on the basis of a set statutory percentage of the sum at stake in the proceedings. However, the domestic legislation provided for an upper limit for any such sum. What is more, litigants unable to pay court fees due to their financial situation were eligible for a deferral of the fees or full or partial exemption from paying them. Thus, the imposition of a state fee for processing an appeal cannot be regarded as a restriction on the applicant's right of access to a court that is incompatible *per se* with Article 6 § 1 of the Convention (see, for instance, *Harrison McKee v. Hungary*, no. 22840/07, §§ 34-35, 3 June 2014; *Nalbant and Others v. Turkey*, no. 59914/16, § 34, 3 May 2022; and *Stoenescu v. Romania*, no. 14166/19, § 38, 28 February 2023).

19. As for the applicant's particular circumstances, it cannot be overlooked that the applicant was effectively afforded approximately a year and three months to pay the fee. More importantly, during this period the applicant was given several opportunities to substantiate her claim about the alleged inability to afford the payment. Yet, she kept insisting that her salary certificate had been sufficient proof to demonstrate her difficult financial circumstances. The Court notes that the applicant did not claim that she was indigent, nor did she request legal aid. While the domestic courts did not specify what evidence she was expected to present in addition to her employment certificate, the Court observes that at no point during this lengthy period did the applicant elaborate on her financial circumstances or submit a bank statement or any other document to demonstrate that the salary had been her sole source of income.

20. At any rate, the turning point in the proceedings was the fact that the applicant missed the time-limit for the payment of the court fee. As expressly noted by the appellate and cassation courts, she neither paid the fee within the

set time-limit nor did she request an extension (see paragraphs 12 and 14 above). Considering that the applicant had been warned about the consequences of such an omission and the fact that she had been represented by a lawyer of her choice, the Court sees no reason to disagree with the findings of the domestic courts. Indeed, a party seeking exemption from court fees should act with requisite diligence when presenting to the courts evidence concerning his or her financial standing and is under an obligation to cooperate faithfully with the courts in this matter (see *Elcomp sp. z o.o. v. Poland*, no. 37492/05, § 41, 19 April 2011).

21. The foregoing considerations are sufficient for the Court to conclude that the appellate court's decision to leave the applicant's appeal unexamined on account of her failure to pay the court fee was not, in the circumstances, disproportionate.

22. It follows that the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 September 2024.

Martina Keller Deputy Registrar	Mykola Gnatovskyy President