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

FIRST SECTION

DECISION

Application no. 44326/13
Tariel MANUKYAN against Armenia
and 3 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 18 October 2016 as a Committee composed of:

Ledi Bianku, *President,*
Aleš Pejchal,
Armen Harutyunyan, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to the above applications lodged on 26 June 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Tariel Manukyan, Mr Misha Asatryan, Mr Frunze Dzvakeryan and Mr Lyova Gabrielyan ("the applicants"), are Armenian nationals, born in 1940, 1945, 1930 and 1940 respectively. They were represented before the Court by Mr A. Zeynalyan and Mr A. Ghazaryan, non-practising lawyers.

2. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. On 12 February 2016 applicant Asatryan died. His wife, Ms Nvard Alumyan, who is also his legal heir, expressed her wish to pursue the proceedings in his stead. The Government raised no objections in this regard. The Court accepts therefore that Ms. Alumyan has standing to continue the present proceedings in the Mr. Asatryan's stead.

A. The circumstances of the case

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicants are former judges who retired at different times before 2009.

6. On 21 February 2007 the Judicial Code was adopted. It was put into force by the Law of 22 February 2007 on Entry into Force of the Judicial Code (the Law).

7. In May 2008 the Law was supplemented by Article 2.1 which provided that a monthly premium in the amount of the difference between 75% of the monthly salary earned in the last position as judge and the State retirement pension was to be added to the retirement pension allocated to a person who had worked for ten or more years as a judge and who had terminated office on the grounds envisaged by point 2 of the fourth paragraph of Article 167 of the Judicial Code.

8. As of 1 January 2009 judges received a 100% salary increase.

9. The pensions allocated to retired judges, including those of the applicants, were not recalculated on the basis of the new rates.

10. On 4 May 2009 the second applicant lodged a claim with the Administrative Court against the Ministry of Labour and Social Affairs (the Ministry) and the State Social Security Service seeking recalculation of his retirement pension starting from 1 January 2009.

11. On 1 December 2009 the Administrative Court granted the second applicant's claims in their entirety. This judgment was not appealed against and became final.

12. In February 2010 the first, third and fourth applicants lodged claims with the Administrative Court against the Ministry seeking recalculation of their retirement pension, including the amount of the additional premium.

13. On 4 March 2010 the bailiff instituted enforcement proceedings in respect of the judgment in the second applicant's favour and made a decision to compel the Ministry and the State Social Security Service to comply with the judgment within a ten-day period.

14. By judgments of 15 June 2010 the Administrative Court granted the third and fourth applicants' claims in their entirety. In doing so, it concluded that their pension, including the additional monthly premium, was subject to recalculation by the Ministry as from 1 January 2009.

15. On 18 June 2010 the Administrative Court similarly granted the first applicant's claims in their entirety.

16. The Ministry lodged appeals on points of law against the judgments of 15 June 2010 in favour of the third and fourth applicants and the judgment of 18 June 2010 in favour of the first applicant.

17. In July-August 2010 the Government initiated new amendments to the Law. A draft Law on Making Amendments to the Law was prepared

which proposed reformulating Article 2.1 of the Law to state that the amount of the monthly premium to be added to the retirement pension allocated to judges was the difference between 55% of the average monthly salary earned at the position held by a judge during the last year of service and the amount of the State retirement pension.

18. On 5 August 2010 the Government adopted Decree No. 1041 A according to which the discussion in the National Assembly of the draft Law on Making Amendments to the Law was considered an urgent matter.

19. On 5 October 2010 the above draft law was adopted. It entered into force from 20 November 2010.

20. On 27 May 2011 the Court of Cassation rejected the Ministry's appeals on points of law finding, in particular, that the legislation in force directly provided for the possibility of recalculation of the additional monthly premium to the allocated pension.

21. On 23 June and 9 July 2011 the bailiff instituted enforcement proceedings and made decisions to compel the Ministry to comply with the judgments of 15 and 18 June 2010 in favour of the third and first applicants respectively, within a ten-day period.

22. On 16 September 2011 the Ministry of Finance lodged out-of-time appeals with the Administrative Court of Appeal against the judgments of 1 December 2009, 15 and 18 June 2010 arguing that it had not been a party to the respective proceedings while these concerned its rights and obligations, given that their result could have implications for the State budget. It stated that the existence of the judgments had come to its attention as a result of a letter from the Ministry of 15 September 2011.

23. In their replies the applicants argued, *inter alia*, that the Ministry of Finance had been informed about the proceedings by registered mail, as required by the procedural law, but the Ministry had not expressed willingness to be involved in the proceedings, which right it had under the procedure. They further argued that, given the initiation by the Government of a draft law on making amendments to the Law, the Minister of Finance could not have been unaware of the judgments in question, in view of the fact that the relevant discussions had taken place with the necessary participation of the Ministry of Finance. They finally argued that in such circumstances the appeals lodged by the Minister of Finance were aimed solely at avoiding the enforcement of the final and binding judgment in their favour.

24. On 28 October 2011 the Administrative Court of Appeal quashed the judgments and remitted the applicants' claims for a fresh examination on the ground that the Ministry of Finance had not been involved in the proceedings.

25. The first, third and fourth applicants lodged appeals on points of law.

26. On 14 December 2011 the Court of Cassation declared their appeals on points of law inadmissible for lack of merit.

27. By letters of 29 December 2011 the registry of the Court of Cassation informed the first, third and fourth applicants about the decisions.

28. By judgments of 30 October 2012 the Administrative Court rejected the third and fourth applicants' claims.

29. By judgments of 1 and 7 November 2012 the Administrative Court rejected respectively the first and second applicants' claims.

30. The applicants appealed against these judgments.

31. On 24 December 2012 the DEJA made a decision to terminate the enforcement proceedings on the ground that the judgments of 1 December 2009, 15 and 18 June 2010 had been quashed by the decisions of the Administrative Court of Appeal of 28 October 2011.

32. On 28 February 2013 the Administrative Court of Appeal rejected the first, third and fourth applicants' appeals, concluding that no right to recalculation of the premium to the retirement pension of judges had been recognised prior to the amendments to the Law adopted on 5 October 2010. It found accordingly that they did not have a right to recalculation of the pension premium starting from January 2009.

33. On 2 April 2013 the Administrative Court of Appeal rejected the second applicant's appeal on similar grounds.

34. The applicants lodged appeals on points of law.

35. On 10 April 2013 the Court of Cassation declared the first applicant's appeal on points of law inadmissible for lack of merit.

36. On 23 April 2013 the Court of Cassation declared the third and fourth applicants' appeals on points of law inadmissible for lack of merit.

37. On 8 May 2013 the second applicant's appeal on points of law was similarly declared inadmissible for lack of merit.

B. Relevant domestic law

The Judicial Code (in force from 18 May 2007)

38. Article 167 § 4 (2) states that a judge's term of office is terminated when he reaches the age of 65 (maximum age for office).

The Law of 22 February 2007 on Entry into Force of the Judicial Code (as in force from 26 June 2008 until 20 November 2010)

39. By the law of 26 May 2008 the Law on Entry into Force of the Judicial Code was supplemented by Article 2.1. This provision stated that a monthly premium in the amount of the difference between 75% of the monthly salary earned in the last position as judge and the State retirement pension was to be added to the retirement pension allocated to a person who had worked for ten or more years as a judge and who had terminated office on the grounds envisaged by point 2 of the fourth paragraph of Article 167 of the Judicial Code.

The Law of 5 October 2010 on making amendments to the Law on Entry into Force of the Judicial Code (as in force from 20 November 2010)

40. By this law, Article 2.1 of the Law on Entry into Force of the Judicial Code was reformulated to state that a monthly premium in the amount of the difference between 55% of the average monthly salary earned in the position held by a judge during the last year of service and the State retirement pension rate was to be added to the retirement pension allocated, in accordance with the Law on State Retirement Pensions, to a person who had worked for ten or more years as a judge and who had terminated office on the grounds envisaged by point 2 of the fourth paragraph of Article 167 of the Judicial Code. It further stated that the amount of the premium was to be recalculated in case of recalculation of the State retirement pension and an increase in rates of judges' salaries in respect of the last position as a judge held by the person concerned.

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

41. According to Article 42 § 1 (6), the bailiff terminates the enforcement proceedings if the judicial act, in respect of which a writ of execution was issued, has been quashed.

COMPLAINTS

42. The applicants complained under Article 6 § 1 of the Convention of the non-execution of the judgments in their favour which entitled them to recalculation of their retirement pensions.

43. They complained under Article 1 of Protocol No. 1 to the Convention of a violation of their property rights insofar as the judgments in their favour were not executed due to the reopening of the proceedings and the resultant rejection of their claims.

THE LAW

A. Joinder of the applications

44. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Complaints under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention

45. The applicants complained of the non-enforcement of the final judgments in their favour and the application of the amended provisions of the Law within the framework of the reopened proceedings. They relied on Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention, the relevant parts of which read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an ... impartial 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 ..."

46. The Government stated that the judgments in the applicants' favour ceased to be final and binding once they were quashed by the decisions of the Administrative Court of Appeal rendered on 28 October 2011. The applicants should have lodged their applications within the six months following the date when their respective judgments were finally quashed.

47. The first, second and third applicants did not comment on the Government's objection of non-compliance with the six-month rule. The fourth applicant stated that the final decision to quash the judgment in his favour could not be considered as the starting point for the running of the six-month period since the Administrative Court of Appeal decided to remit the case for a fresh examination as opposed to quashing it and making a new ruling on the merits at the same time.

48. The Court notes that the applicants' complaints concerning the non-enforcement of the final judgments in their favour and the application of the amended provisions of the Law after the proceedings were reopened stem from the fact that the judgments at issue were quashed which resulted in the impossibility to enforce them and in the reexamination of the applicants' claims.

49. The Court observes that the decisions of the Administrative Court of Appeal of 28 October 2011 to quash the judgments in the applicants' favour were subject to appeal to the Court of Cassation, of which possibility the applicants, with the exception of the second applicant, availed themselves.

50. The Court further observes that the decisions of 28 October 2011, as far as the first, third and fourth applicants are concerned, became final on

14 December 2011, the date when the Court of Cassation declared their appeals on points of law inadmissible. They were informed of those decisions by the letters of the registry of the Court of Cassation of 29 December 2011. As far as the second applicant is concerned, the decision of 28 October 2011 became final since he did not appeal against it.

51. The Court reiterates that the quashing of a final judgment is an instantaneous act which does not create a continuing situation, even if it entails the reopening of the proceedings, as in the instant cases (see, among many other authorities, *The Mrevli Foundation v. Georgia* (dec.), no. 25491/04, 5 May 2009; *Sardin v. Russia* (dec.), no. 69582/01, ECHR 2004-II and *Khanyan v. Armenia* (dec.), no. 19065/05, 5 July 2007).

52. The Court notes that the applicants failed to apply to the Court within six months from the date of the final quashing of the judgments in their favour. As far as the first, second and third applicants are concerned, they applied to the Court after the bailiff terminated the enforcement proceedings on 24 December 2012. This fact, however, does not affect the Court's conclusions, taking into account that after the judgments had been quashed at the final instance, the enforcement proceedings were in any event subject to termination under Article 42 § 1 (6) of the Law on the Enforcement of Judicial Acts. It is true that the bailiff officially terminated the enforcement proceedings only one year after the judgments had ceased to be final and binding. However, this appears to have been a simple formality which did not create any legal consequences, given that the judgments were no longer subject to enforcement.

53. Consequently, the Court considers that in order to comply with the requirements of Article 35 § 1, the applicants should have lodged their applications within six months starting from the dates when it became clear to them that the judgments in their favour no longer had binding force. The applications were lodged with the Court on 26 June 2013 while the judgment in the second applicant's favour was finally quashed by the Administrative Court of Appeal on 28 October 2011 and, as regards the rest of the applicants, on 14 December 2011, the date when the Court of Cassation upheld the decisions quashing their respective judgments. Nothing in the submissions of the first, third and fourth applicants indicates that they did not receive the letters of 29 December 2011 informing them of the decisions of the Court of Cassation of 14 December 2011 shortly thereafter.

54. It follows that these complaints were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 10 November 2016.

Renata Degener Deputy Registrar	Ledi Bianku President

APPENDIX

	Case no.	Case name	Date of lodging	Introduced by
1.	44326/13	Manukyan v. Armenia	26/06/2013	T. Manukyan
2.	44331/13	Dzvakeryan v. Armenia	26/06/2013	F. Dzvakeryan
3.	44335/13	Asatryan v. Armenia	26/06/2013	M. Asatryan
4.	44338/13	Gabrielyan v. Armenia	26/06/2013	L. Gabrielyan