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

FOURTH SECTION

DECISION

Application no. 42812/16
Alichka NAREKATSYAN
against Armenia

The European Court of Human Rights (Fourth Section), sitting on 14 May 2024 as a Committee composed of:

Tim Eicke, President,
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 42812/16) 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 15 July 2016 by an Armenian national, Ms Alichka Narekatsyan ("the applicant"), who was born in 1941, lived in Yerevan and was represented by Mr A. Atoyan, a non-lawyer representative;

the decision to give notice of the complaints under Article 2 of the Convention to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare inadmissible the remainder of the application;

the Government's observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the death of the applicant's husband, P.S., resulting from alleged medical malpractice and the alleged lack of an effective investigation into the matter.

2. It appears that in 2013 P.S. underwent three surgeries in two different hospitals, the first surgery being related to a hernia and the following two were for the placement and subsequent removal of a vascular prosthesis.

3. It further appears that on 15 January 2014 a computer tomography showed, *inter alia*, a non-homogeneous mass in P.S.'s abdomen.

4. In early March 2014 P.S., being in a severe condition, was admitted to the same hospital where he had previously undergone the last two surgeries and was transferred to the intensive care unit where he died on 10 March 2014.

5. P.S.'s nephew filed a police report alleging that the death of P.S. had resulted from inadequate medical treatment. On 20 March 2014 criminal proceedings were instituted into the alleged medical negligence. On 24 March 2014 the applicant was recognised as P.S.'s legal heir in the criminal proceedings. The investigation eventually concluded that P.S.'s death had not been caused by medical malpractice. On 5 December 2014 the criminal proceedings were terminated and the applicant unsuccessfully appealed against that decision to the prosecutor and the courts. On 9 March 2016 the applicant's appeal on points of law lodged with the Court of Cassation was declared inadmissible for lack of merit.

6. On 15 July 2016 the applicant lodged an application with the Court, complaining under Article 2 that the investigation into her husband's death had not been thorough.

7. By the Registry's letter of 19 October 2016, the applicant's representative was asked to keep the Court informed about the main developments in the case.

8. By a letter of 8 February 2021, the Registry, following its practice in situations where a significant amount of time has passed without any correspondence from applicants or their representatives, asked the applicant's representative if the applicant wished to maintain her application.

9. By a letter received by the Registry on 13 April 2021 the applicant's representative replied that "they" were interested in the examination of the application and requested that the examination of "their" application be continued.

10. On 27 September 2022 the President of the Section to which the case had been allocated decided to give notice of part of the application to the Armenian Government.

11. By a letter of 19 January 2023 the Registry asked that the applicant appoint a legal representative (an advocate) of her choice. No reply followed.

12. In their observations submitted on 12 June 2023, the Government informed the Court that the applicant had died on 4 May 2020. The Government also submitted a copy of the applicant's death certificate.

13. These observations were forwarded to the applicant's address and were returned to the Court marked "deceased".

THE COURT'S ASSESSMENT

14. Although the Government did not expressly raise the question of whether the failure of the applicant's representative to inform the Court of her death might constitute an abuse of the right of individual application, the Court finds it appropriate to address the issue of its own motion, as it has done in previous cases (see *Dimo Dimov and Others v. Bulgaria*, no. 30044/10, § 41, 7 July 2020, with further references).

15. The general principles concerning the rejection of an application on grounds of abuse of the right of individual application have been summarised in *Gross v. Switzerland* ([GC], no. 67810/10, § 28, ECHR 2014). In particular, the Court emphasises that an application may be rejected as an abuse of the right of application where new, important developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts *(ibid.*).

16. In the present case, the Court notes that the applicant's death had occurred more than two years before notice of the complaints was given to the Government. However, the applicant's representative did not inform the Court of the applicant's death either at the time it occurred or in his subsequent exchanges with the Court. On the contrary, in reply to the Registry's letter, he stated that "they" were interested in the examination of the application and requested that the examination of "their" application be continued. It was the Government who informed the Court that the applicant had died in their observations submitted on 12 June 2023.

17. Having regard to the importance of the information at issue for the proper determination of the present case, the Court finds that such conduct on the part of the applicant's representative was contrary to the purpose of the right of individual application and amounted to an abuse of that right within the meaning of Article 35 § 3 (a) of the Convention (see, to illustrate the application of the aforementioned general principles in similar cases, *Bolognese and Others v. Italy* (dec.) [Committee], no. 7312/10, §§ 19-25, 5 July 2022; *Solidoro v. Italy* (dec.) [Committee], no. 19592/14, §§ 12-17, 10 January 2023; and *Iliopoulos v. Greece* (dec.) [Committee], no. 79448/16, §§ 15-19, 7 November 2023). The application must therefore 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 6 June 2024.

Valentin Nicolescu Acting Deputy Registrar	Tim Eicke President