



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

THIRD SECTION

DECISION

Application no. 72733/10
Hayk MARGARYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 4 June 2013 as a Chamber composed of:

Josep Casadevall, President,
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 6 December 2010,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Hayk Margaryan, is an Armenian national who was born in 1949 and lives in Yerevan. He was represented before the Court by Mr N. Yeghiazaryan, a non-practising lawyer.

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.

A. The circumstances of the case

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

4. The applicant is a former employee of the General Prosecutor's Office.

5. By order of the General Prosecutor of 1 June 2007 the applicant was granted an early retirement pension for which he had applied due to health problems. His monthly pension amounted to 313,547 Armenian drams (AMD).

6. By order of the General Prosecutor of 21 August 2008 it was decided to terminate the payment of the monthly pension. It appears that this decision was based on a report which had found that the medical documents submitted by the applicant in support of his application were not up-to-date and therefore lacked credibility.

7. On 29 August 2008 the applicant co-wrote a newspaper article critical of the Armenian prosecution authorities.

8. The payment of the applicant's monthly pension was stopped from September 2008. The applicant was informed about this decision by letter of 4 September 2008.

9. On 18 November 2008 the applicant instituted court proceedings against the General Prosecutor's Office seeking to declare null and void the order of 21 August 2008 and to resume the payment of his monthly pension from the date on which it had been terminated. He also alleged that the termination of his pension was provoked by the newspaper article which he had co-written.

10. On 22 April 2009 the Administrative Court delivered the judgment in the applicant's case the operative part of which stated:

“Partially satisfy the [applicant's] claim against the General Prosecutor's Office of the Republic of Armenia.

Declare (prove) null the General Prosecutor's order no. 166 of 21 August 2008.

Dismiss the [applicant's] claim on declaring the General Prosecutor's order no. 166 of 21 August 2008 void.

Seize AMD 4,000 from the General Prosecutor's Office as compensation to the applicant for the paid court fee.

The judgment enters into force after one month from the moment of its pronouncement and can be appealed to the Court of Cassation.

In case of failure to execute the judgment voluntarily it will be enforced by the service of the enforcement of judicial acts at the expense of the debtor.”

11. On 20 May 2009 the General Prosecutor's Office lodged an appeal on points of law, but later sought to withdraw its appeal.

12. On 13 July 2009 the Court of Cassation decided to return the appeal so the judgment of 22 April 2009 became final.

13. By letter of 3 August 2009 and with reference to the final judgment of 22 April 2009, the applicant requested the General Prosecutor to resume the payment of his pension and to make a lump sum payment of the unpaid pension due for the period starting from September 2008.

14. By letter of 7 August 2009 the General Prosecutor's Office replied that they had lodged a claim with the courts, seeking termination of his monthly pension. Hence, it was possible to address the question raised in his letter of 3 August 2009 only after final judgment on the disputed matter.

15. On 21 August 2009 the Administrative Court issued a writ of execution which the applicant then submitted to the bailiffs.

16. On 4 September 2009 the bailiff instituted enforcement proceedings.

17. On 30 September 2009 the General Prosecutor's Office filed an application with the Administrative Court, seeking a deferral of enforcement of the final judgment of 22 April 2009 until a final judgment had been adopted on the claim seeking termination of the applicant's monthly pension. It was stated in the application that the applicant's monthly pension amounted to AMD 313,547, while the unpaid pension for the period between September 2008 and October 2009 amounted to a total of AMD 4,076,111. Compliance with the final judgment of 22 April 2009 would imply the payment of these amounts, which would have to come from the state budget and which would not be possible when a claim seeking termination of the applicant's monthly pension was pending before the courts.

18. On 8 October 2009 the Administrative Court dismissed this application finding that the consequences of the annulment of the order of 21 August 2008 were prescribed by law and it was not competent to defer such consequences.

19. Between September and December 2009 the applicant addressed several letters to the chief bailiff, complaining that no measures had been taken to enforce the final judgment of 22 April 2009 and requesting that the General Prosecutor be compelled to comply with that judgment. It appears that the applicant was asked to submit his bank account details in order to have the amount of costs and expenses awarded by that judgment paid to him.

20. On 16 December 2009 the bailiff decided to terminate the enforcement proceedings on the ground that "the requirement contained in the writ of execution had actually been fulfilled".

21. On 29 December 2009 the applicant contested this decision before the courts.

22. On 3 June 2010 the Administrative Court dismissed his claim, finding that the writ of execution contained only one requirement, namely the payment of AMD 4,000, which had been enforced. As regards the

annulment of the order of 21 August 2008, this had already been done by the judgment of 22 April 2009 and the bailiff was not required to adopt any additional decisions on this matter.

23. On 28 July 2010 the Court of Cassation upheld this decision upon the applicant's appeal.

24. The application was communicated to the respondent Government on 16 December 2011. By their letter dated 6 March 2012 the Government informed the Court that on 12 December 2011 the General Prosecutor's Office had redeemed the amount of unpaid pension for the period from September 2008 to December 2011 amounting to a total of AMD 12,543,080. The General Prosecutor's Office had also resumed the monthly payment of the applicant's pension in the amount of AMD 313,647, and paid to the applicant the interest calculated from the amount of unpaid pension for the period starting from September 2008 to November 2011, the total amount being AMD 1,467,532.

25. In his observations of 18 June 2012 the applicant confirmed the fact of having been paid by the national authorities.

B. Relevant domestic law

Law on the Principles of administration and administrative Procedure

26. According to Section 62 § 1 (b), an administrative decision, which was adopted by an administrative authority lacking competence to do so, shall be null and void. According to Section 62 § 2, an administrative decision which is null and void has no legal force from the moment of its adoption and shall not be enforced or applied.

COMPLAINTS

27. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the Convention that the authorities had failed to enforce the final judgment of 22 April 2009.

THE LAW

28. The applicant complained of the non-enforcement of a final judgment and relied on Article 6 of the Convention and Article 1 of Protocol No. 1. The Court considers it necessary to examine his complaints under those provisions, the relevant parts of which read as follows:

Article 6 § 1 of the Convention

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time ... 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 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...”

A. The parties’ submissions*1. The Government*

29. In view of the fact that the General Prosecutor’s Office completely redeemed the amount of unpaid pension, resumed the monthly payment of the applicant’s pension, as well as paid to the applicant the interest calculated from the amount of unpaid pension, in their observations of 13 April 2012 the Government submitted that the matter had been settled at the national level. The Government found that it was no longer justified for the Court to continue the examination of this application and requested that it be struck out of its list of cases in accordance with Article 37 (b) of the Convention. In the Government’s submission, the case did not raise any serious questions affecting the interpretation or application of the Convention, or indeed any serious issues of general importance.

2. The applicant

30. In his subsequent observations the applicant confirmed that the General Prosecutor’s Office completely redeemed the amount of unpaid pension, resumed the monthly payment of his pension and paid the interest calculated from the amount of unpaid pension, but maintained that the judgment had not been fully enforced since the Government had not compensated the court expenses amounting to AMD 2,610,000 in total. Moreover, the applicant claimed 10,000 euros in respect of non-pecuniary damage for lengthy enforcement of the judgment.

B. The Court's assessment

31. The Court notes that this case was communicated to the respondent Government on 16 December 2011. On 6 March 2012 the Government informed the Court that on 12 December 2011 the amount of the applicant's unpaid pension was completely redeemed, the monthly payment of his pension was resumed and the interest calculated from the amount of unpaid pension was paid to the applicant. In his observations of 18 June 2012 the applicant confirmed the fact of having been paid by the national authorities.

32. In first place, the Court recalls that according to Rule 47 § 6 of the Rules of Court applicants shall keep the Court informed of all circumstances relevant to the application. It further recalls that incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Predescu v. Romania*, no. 21447/03, §§ 25-26, 2 December 2008).

33. Turning to the present case, the Court notes that in his application lodged on 6 December 2010, the applicant complained about non-enforcement of a judgment in his favour. On 16 December 2011 the Court communicated the applicant's complaint concerning non-enforcement of the judgment to the respondent Government. By their letter of 6 March 2012 the Government informed the Court about the payments made on 12 December 2011 (see paragraph 24 above). The applicant omitted to inform the Court about the payments made by the national authorities. Only in his letter of 18 June 2012 sent in response to the Government's observations, the applicant admitted that he had been paid (see paragraph 25 above).

34. Given the importance of the information at issue for the proper determination of the present case, the Court finds that the applicant's conduct was contrary to the purpose of the right of individual petition, as provided for in Article 34 of the Convention. The Court also finds that there are other grounds to reject the application.

35. In the light of the new developments brought to its attention, the Court considers that, for the reasons set out below, there is no objective justification for continuing to examine this complaint and that it is thus appropriate to apply Article 37 § 1 of the Convention, which provides as follows:

“The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

...

(b) the matter has been resolved;

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect of human rights as defined in the Convention and the Protocols thereto so requires.”

36. Since the applicant gave a clear indication that he intended to pursue his application, sub-paragraph (a) of Article 37 § 1 is not applicable. That does not, however, rule out the possibility of applying sub-paragraphs (b) and (c), the applicant’s consent not being a prerequisite for their application (see *Akman v. Turkey* (striking out), no. 37453/97, ECHR 2001-VI).

37. In order to ascertain whether Article 37 § 1 (b) applies to the present case, the Court must answer two questions in turn: first, whether the circumstances complained of directly by the applicant still obtain and, second, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42, 24 October 2002; *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007-I). In the present case, that entails first of all establishing whether the non-enforcement of the judgment of 22 April 2009 persists; after that, the Court must consider whether the measures taken by the authorities constitute sufficient redress for the applicant’s complaint.

38. As to the first question, the Court first of all observes that the administrative proceedings resulted in the domestic court declaring the administrative act of the General Prosecutor null and awarding the applicant costs and expenses in the amount of AMD 4,000. The judgment did not expressly impose an obligation on the bailiff to resume the payment of the applicant’s pension (see paragraph 10 above).

39. In any case, even assuming that the judgment of 22 April 2009 can be understood as obliging the General Prosecutor’s Office to resume the payment of the applicant’s pension, the Court finds that the applicant is no longer prevented from receiving his pension. It follows from the letter of the Government dated 6 March 2012 that the General Prosecutor’s Office resumed the monthly payment of the applicant’s pension (see paragraph 24 above).

40. In so far as the applicant complained about non-enforcement of the judgment of 22 April 2009 in the part relating to court expenses, the Court notes that no obligation to compensate the applicant’s court expenses, except the amount of AMD 4000, was mentioned in that judgment (see paragraph 10 above).

41. As regards the second question, the Court observes that the amount of unpaid pension for the period from September 2008 to December 2011 had been completely redeemed. Moreover, the Court notes that the applicant was paid the interest calculated from the amount of unpaid pension in the amount of AMD 1,467,532.

42. Since the monthly payment of the applicant's pension was resumed, the amount of unpaid pension was completely redeemed and the applicant was compensated for the lengthy enforcement of the judgment, the Court considers, in the light of all the relevant circumstances of the case, that his complaints have been adequately and sufficiently remedied (see, *mutatis mutandis*, *Sisojeva and Others* cited above, § 102).

43. Having regard to the above, the Court, in exercising its own power to decide whether the matter involved in the present case "has been resolved" and whether to strike the case out of its list under Article 37 § 1(b) of the Convention, has been satisfied with the remedy at domestic level that makes further examination of the present application no longer justified. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

44. Accordingly, the application should be struck out of the Court's list of cases.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Santiago Quesada
Registrar

Josep Casadevall
President