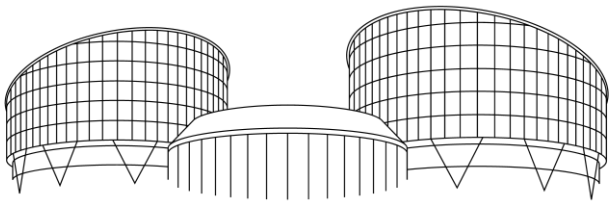

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 11456/05
by Lermik GURURYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 24 January 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 2 March 2005,

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, Ms Lermik Gururyan, is an Armenian national who was born in 1940 and lives in Hrazdan. She was represented before the Court by Mr A. Grigoryan, a lawyer practising in Yerevan. The Armenian 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

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

1. Background to the case

3. The applicant's late husband had worked for Hrazdanmash Closed Joint-Stock Company (hereafter "Hrazdanmash"), a company involved in manufacturing various machinery and equipment and whose majority shareholder is the State.

4. No salary was paid to the staff for the years 1998-2000, since Hrazdanmash was experiencing financial problems. In 2000 the majority of Hrazdanmash's staff were ordered to take unpaid leave for an indefinite period.

2. Judgment of 2 July 2001

5. On 17 May 2001 the relevant trade union instituted court proceedings against Hrazdanmash in the interests of the staff, seeking arrears for unpaid salary and other benefits.

6. On 2 July 2001 the Kotayk Regional Court granted the claim and ordered Hrazdanmash to pay a total of AMD 58,060,925, including AMD 327,073.73 to the applicant's late husband. No appeal was lodged against this judgment which became final.

7. On 18 July 2001 the Regional Court issued the writ of execution (*կատարողական թերթ*).

8. On 23 July 2001 the bailiff instituted enforcement proceedings no. 738. In the course of these proceedings the bailiff decided to freeze Hrazdanmash's property and bank accounts.

9. On 13 September 2001 the bailiff decided to stay enforcement proceedings no. 738 on the ground that bankruptcy proceedings had been instituted in respect of Hrazdanmash. It appears, however, that the enforcement proceedings were resumed on 19 October 2001 and that part of Hrazdanmash's frozen property was sold at a public auction. On 4 February 2002 the Commercial Court decided to terminate the bankruptcy proceedings.

10. On 22 February 2002 the bailiff once again decided to stay enforcement proceedings no. 738, but later resumed them on 23 January 2003.

11. On 27 March 2003 the Government adopted decree no. 329-A, on the basis of which Hrazdanmash was allowed to sell its property. The proceeds of the sale were to be directed by the company towards paying off its debts in respect of the State budget.

12. On 7 July 2003 the bailiff stayed the enforcement proceedings on the basis of this decree.

13. On 23 July 2003 the Government adopted decree no. 955-A, according to which it decided to sell its shares in Hrazdanmash to a private company. The buyer in return undertook an obligation towards the State to make investments of various amounts, including creation of jobs.

14. It appears that enforcement proceedings no. 738 remained stayed on the basis of this decree for several years but were later resumed on 9 November 2006.

3. Judgment of 16 December 2002

15. On 9 November 2002 the applicant's late husband was ordered to take unpaid leave.

16. On an unspecified date thereafter he instituted proceedings against Hrazdanmash, seeking unpaid salary for the period between 1 April 2001 and 1 November 2002.

17. On 16 December 2002 the Kotayk Regional Court granted the claim and ordered Hrazdanmash to pay AMD 152,847 to the applicant's late husband. No appeal was lodged against this judgment which became final.

18. On 8 January 2003 the Regional Court issued the writ of execution upon the request of the applicant's late husband.

19. On 7 March 2003 the applicant's late husband submitted the writ of execution to the bailiff.

20. On 10 March 2003 the bailiff instituted enforcement proceedings no. 353 on the basis of the above writ of execution.

21. On 14 May 2003 the applicant's late husband requested the withdrawal of the writ of execution.

22. On 15 May 2003 the bailiff decided to discontinue the enforcement proceedings (*ավարտել կատարողական վարույթը*) on the ground that the applicant's late husband had requested the withdrawal of the writ of execution.

23. On 2 December 2003 the applicant's husband passed away.

4. Judgment of 18 February 2005

24. On an unspecified date the applicant instituted proceedings against Hrazdanmash, claiming that the respondent owed her late husband AMD 429,955 in unpaid salary and seeking to be awarded that amount.

25. In her submissions made before the Kotayk Regional Court the applicant modified her claim, seeking a smaller amount, namely AMD 102,882, in view of the fact that a sum of money had already been awarded to her late husband by the judgment of 2 July 2001.

26. A representative of Hrazdanmash who was present at the hearing did not object to the applicant's claim.

27. On 18 February 2005 the Kotayk Regional Court, having examined the materials of the case, including the applicant's marriage certificate and the certificate concerning unpaid salary, found the applicant's claim to be substantiated and ordered Hrazdanmash to pay AMD 102,882 to the applicant. No appeal was lodged against this judgment which became final.

28. It appears that the applicant did not request the Regional Court to issue a writ of execution in order to submit it to the bailiff for enforcement purposes.

5. Further developments

29. On 2 May 2007 the application was communicated to the respondent Government.

30. On 30 July 2007 the Government submitted their observations.

31. On 25 September 2007 the applicant submitted her observations and just satisfaction claims.

32. On 29 November 2007 the Government submitted their comments on the applicant's just satisfaction claims.

33. By a letter of 12 December 2007 the Government informed the Court that on 23 October 2007 the applicant had been recognised as her late husband's heir. The Government submitted a copy of an inheritance certificate dated 23 October 2007 which had been issued upon the applicant's application. The certificate was issued by the local notary in respect of the applicant and her three children and mentioned as the estate the deceased's flat, as well as unpaid salary and other lump-sum payments owed to him by Hrazdanmash. The Government further stated that on 26 October 2007 the applicant had filed a request with the bailiff, seeking to reopen enforcement proceedings no. 353, which had been granted. As a result, all three judgments had been enforced and the applicant had received all the corresponding outstanding amounts.

34. By a letter of 4 February 2008 the applicant confirmed that the judgment debts had been paid to her on 29 November 2007.

B. Relevant domestic law

1. Summary of the relevant domestic provisions

35. For a summary of the relevant domestic provisions see the judgment in the case of *Khachatryan v. Armenia* (no. 31761/04, §§ 37-44, 1 December 2009).

2. Other relevant domestic provisions not cited in that judgment read as follows

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

36. According to Section 9 § 1, if a party to enforcement proceedings dies, the bailiff is obliged to replace him with a legal successor as determined by law, a court judgment or an agreement.

37. According to Section 41 § 1 (1), the bailiff shall discontinue the enforcement proceedings if the creditor has requested the withdrawal of the writ of execution.

38. According to Section 42 § 1 (2), the bailiff shall terminate the enforcement proceedings (*կարճել կատարողական վարույթը*) if the creditor waives his claim for recovery of the judgment award.

39. According to Section 42 § 1 (4), the bailiff shall terminate the enforcement proceedings if the creditor or the debtor has died and the claims or the debts established by the judicial act may not be transferred to his legal successor.

(b) The Labour Code (adopted on 9 November 2004 and in force from 21 June 2005)

40. Article 197 provides that, if an employee dies, his outstanding salary and other similar payments shall be paid to a family member, provided that the latter submits the death certificate and other necessary documents certifying the family link within six months after the date of the person's death.

(c) The Civil Code (in force from 1 January 1999)

41. According to Articles 1186, 1188, 1226 and 1227, the estate encompasses the property belonging to the testator on the date of opening the inheritance, including funds, securities and proprietary rights and obligations. The inheritance shall be opened on the date of a person's death. An heir accepts inheritance by submitting an application on accepting the inheritance or on receiving an inheritance certificate from the notary of the district where the inheritance was opened. Inheritance can be accepted within six months after the date of opening the inheritance.

42. According to Article 1228, the court may recognise the acceptance of inheritance by an heir who has missed the prescribed time-limit, if it finds the reasons for missing the time-limit to be valid. An heir may accept the inheritance after the expiry of the prescribed time-limit without applying to the courts, if all other heirs who have accepted the inheritance agree. Such agreement signed by the heirs must be notarised. Based on such agreement, the notary shall annul the previous inheritance certificate and issue a new one.

43. According to Article 1249, family members of the deceased, as well as his dependents who are incapacitated, have the right to receive the outstanding salary, pensions, benefits and compensation for damage to life or health which, for whatever reason, were not paid to the deceased in his lifetime. Requests to receive these payments must be submitted within six months after the date of opening the inheritance. If no such claim is submitted within the prescribed time-limit, the relevant sums shall be included in the estate and be inherited under the general conditions prescribed by this Code.

COMPLAINT

44. The applicant complained under Article 1 of Protocol No. 1 that the State had failed to enforce the final judgments of 2 July 2001, 16 December 2002 and 18 February 2005.

THE LAW

The applicant complained of the non-enforcement of three final judgments and relied on Article 1 of Protocol No. 1. The Court considers it necessary to examine her complaints both under that provision and Article 6 § 1 of the Convention, 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 ... 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."

A. Admissibility

1. The parties' submissions

(a) The Government

45. The Government submitted that the applicant could not claim to be a victim of an alleged violation of the Convention and Protocol No. 1 as far as the judgments of 2 July 2001 and 16 December 2002 were concerned for the following reasons.

46. Firstly, as regards the judgment of 2 July 2001, this judgment was adopted in respect of the applicant's late husband but not the applicant herself. The applicant could not be considered as her late husband's legal successor for enforcement purposes. In particular, Section 9 of the Law on Enforcement of Judicial Acts prescribed a possibility for legal succession in enforcement proceedings. However, in order to be recognised as such, the applicant had to follow the procedure prescribed by the Labour Code and the Civil Code. Thus, within six months after her husband's death the applicant should have submitted to the bailiff the documents required under Article 197 of the Labour Code and asked the bailiff to apply the above Section 9 or, having failed to do so within six months, she should have then requested the recognition of her inheritance rights in accordance with the procedure prescribed by the Civil Code, after which she could have applied to the bailiff. The applicant has, however, failed to follow any of these procedures and, in consequence, none of her rights guaranteed by the Convention have been affected. The Government admitted in this respect that the Kotayk Regional Court, by its judgment of 18 February 2005, did recognise the applicant as her late husband's legal successor in respect of the Hrazdanmash's obligations towards her late husband, but only as far as the amount awarded by that judgment was concerned. This fact therefore did not affect the situation. The Government argued that, by having failed to pursue the appropriate procedures in order to be recognised as her late husband's legal successor, the applicant also failed to exhaust the domestic remedies.

47. Secondly, as regards the judgment of 16 December 2002, the applicant's late husband, who was the beneficiary, had voluntarily waived his rights by requesting the withdrawal of the writ of execution. Moreover, in this case the applicant could not be considered as her late husband's legal successor either, since legal succession could arise only in respect of existing rights, while no legal succession was possible in respect of enforcement proceedings which had already been discontinued.

48. The Government further raised a number of other objections. First, they requested the Court to strike the application out of its list of cases, taking into account that the judgments in question had been enforced and the matter had therefore been resolved. Second, they submitted that

Hrazdanmash was a separate legal entity and the State as its shareholder was not liable for its debts pursuant to the domestic law. Third, they claimed that the applicant had failed to exhaust the domestic remedies by not contesting the bailiff's inaction and by failing to request that enforcement proceedings be instituted in respect of the judgment of 18 February 2005.

(b) The applicant

49. The applicant contested the Government's first objection, claiming, with reference to the judgment of 18 February 2005, that the authorities had recognised her as her late husband's legal successor. She could therefore claim to be a victim of an alleged violation of the Convention and Protocol No. 1.

50. The applicant further objected to the Government's request to strike out the application, arguing that, while the judgments in question had been eventually enforced, the authorities had failed to take adequate steps for that purpose and did so only during the proceedings before the Court. She was therefore entitled to claim non-pecuniary damage. The applicant did not comment on the remaining points.

2. The Court's assessment

51. The Court does not consider it necessary to resolve all of the above objections raised by the Government since the application is in any event inadmissible for the following reasons.

(a) The judgments of 2 July 2001 and 16 December 2002

52. The Court notes at the outset that the applicant introduced the application in her own name, alleging a violation of her rights and not those of her late husband. The present case must therefore be distinguished from the cases in which an application was introduced on behalf of the deceased person by his next-of-kin or heirs (see, for example, *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI; *Marie-Louise Loyen and Bruneel v. France*, no. 55929/00, §§ 21-22, 5 July 2005; *Fairfield v. the United Kingdom* (dec.), no. 24790/04, ECHR 2005-VI; *Biç and Others v. Turkey*, no. 55955/00, §§ 17 and 20-21, 2 February 2006; and *Micallef v. Malta* [GC], no. 17056/06, §§ 33 and 49, ECHR 2009-...). It is therefore necessary to determine whether the applicant personally can claim to be a victim in connection with the enforcement process of the judgments given in favour of her late husband.

53. The Court reiterates that execution of a judgment given by any court is an integral part of the "trial" for the purpose of Article 6 of the Convention and a delay in the execution must not be such as to impair the essence of the right to a court protected by that Article (see *Burdov v. Russia*, no. 59498/00, §§ 34 and 35, ECHR 2002-III). It further reiterates

that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B).

54. In the present case, the judgments of 2 July 2001 and 16 December 2002 delivered in respect of the applicant's late husband constituted enforceable claims and it is evident that Hrazdanmash's obligation to pay the debts owed under those judgments did not cease with his death. On the contrary, the relevant judgment debts were eventually paid, albeit after a considerable delay, to the applicant as her late husband's heir.

55. The Government alleged, however, that this delay was wholly attributable to the applicant who had failed to pursue any procedures to be recognised as her late husband's heir. The Court notes that the applicant's husband passed away on 2 December 2003. Section 9 of the Law on Enforcement of Judicial Acts indeed provided for a possibility of legal succession in case of death of a party to enforcement proceedings (see paragraph 36 above). Furthermore, the Civil Code prescribed the rules for claiming inheritance following the testator's death (see paragraph 41-43 above). The Court observes that, following her husband's death, the applicant failed to resort to any of these procedures for the purpose of legal succession in respect of the salary debts owed to her late husband. Once she did so in October 2007 and had her inheritance right recognised, the amounts owed to her late husband were paid to her almost immediately (see paragraph 35 above). Furthermore, the judgment of 18 February 2005, contrary to the applicant's claim, did not determine questions of her legal succession in respect of the judgment debts owed to her late husband and concerned exclusively the new claim lodged by the applicant against Hrazdanmash. In such circumstances, the Court considers that the authorities cannot be blamed for the delayed enforcement of the judgments adopted in favour of the applicant's late husband.

56. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) The judgment of 18 February 2005

57. The Court notes at the outset that the applicant indeed appears not to have attempted to institute enforcement proceedings in respect of the judgment of 18 February 2005. It points out, however, that a person who has obtained an enforceable judgment against the State as a result of successful litigation cannot be required to resort to enforcement proceedings in order to have it executed (see *Metaxas v. Greece*, no. 8415/02, § 19, 27 May 2004; *Koltsov*, cited above, § 16; *Cocchiarella v. Italy* [GC], no. 64886/01, § 89, ECHR 2006-V; *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, cited above, § 20; and *Trapeznikova v. Russia*, no. 21539/02,

§ 93, 11 December 2008). The Court is mindful of its finding made in the case of *Khachatryan* to the effect that, despite the fact that Hrazdanmash was formally a separate legal entity, it did not enjoy sufficient institutional and operational independence from the State and the latter was responsible for its salary debts (see *Khachatryan*, cited above, § 54).

58. The judgment of 18 February 2005 was similarly adopted against Hrazdanmash. Hence, it was incumbent on the State to comply with it as soon as the judgment became enforceable, regardless of the fact whether the applicant had requested institution of enforcement proceedings (see, *mutatis mutandis*, *Reynbakh v. Russia*, no. 23405/03, § 24, 29 September 2005, and *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, cited above, § 20). It follows that this complaint cannot be dismissed for failure to exhaust the domestic remedies as requested by the Government.

59. However, having regard to the entry into force of Protocol No. 14, the Court finds it necessary to examine of its own motion whether in this respect it should apply the new inadmissibility criterion provided for in Article 35 § 3 (b) of the Convention as amended (see *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, § 30, 1 June 2010). In accordance with Article 20 of the Protocol, the new provision shall apply from the date of its entry into force to all applications pending before the Court, except those declared admissible.

60. The main element contained in the new admissibility criterion is the question of whether the applicant has suffered a "significant disadvantage". The Court has previously held that this criterion applies where, notwithstanding a potential violation of a right from a purely legal point of view, the level of severity attained does not warrant consideration by an international court (see *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010, and *Gaftoniuc v. Romania* (dec.), no. 30934/05, 22 February 2011). The level of severity shall be assessed in the light of the financial impact of the matter in dispute and the importance of the case for the applicant.

61. In the present case, the Court notes that the salary debt of AMD 102,882 awarded to the applicant by the final judgment of 18 February 2005 was paid on 29 November 2007, that is with a delay of about two years and nine months. While the delay is not insignificant, the Court cannot, nevertheless, overlook the fact that this delay concerned the payment of a relatively small award. The applicant did not submit any arguments or evidence to suggest that the delay in the payment of such an award had a significant impact on her personal life. Thus, considering the relatively minor nature of the award and the fact that it was eventually paid, the Court is of the opinion that the applicant did not suffer significant disadvantage as a result of the delayed enforcement of the final judgment of 18 February 2005.

62. The Court further observes that the problem of non-enforcement of final judgments adopted against Hrazdanmash has already been addressed in

its judgment adopted in the case of *Khachatryan*, cited above, and concludes that respect for human rights, as defined in the Convention and the Protocols thereto, does not require examination of the present complaint on the merits. Finally, it observes that the applicant's case was duly considered by a domestic tribunal within the meaning of Article 35 § 3 (b) as evidenced by the judgment of 18 February 2005 (see *Vasilchenko v. Russia*, no. 34784/02, § 49, 23 September 2010).

63. In view of the foregoing, this complaint should be rejected as inadmissible in accordance with Article 35 § 3 (b) of the Convention, as amended by Protocol No. 14.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President