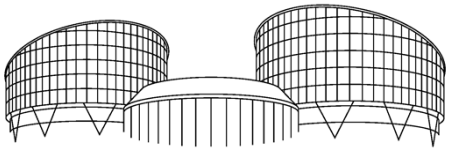

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF FIL LLC v. ARMENIA

(Application no. 18526/13)

JUDGMENT

STRASBOURG

31 January 2019

FINAL

30/04/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Fil LLC v. Armenia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Linos-Alexandre Sicilianos, *President,*
Ksenija Turković,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 8 January 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 18526/13) 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") by Fil LLC ("the applicant company"), on 5 March 2013.

2. The applicant company was represented by Mr A. Kiviryan, Mr T. Yegoryan, Ms L. Hakobyan and Ms D. Grigoryan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights.

3. The applicant company alleged that the length of civil proceedings initiated in 2008 was excessive, and that there was no effective domestic remedy in that respect.

4. On 7 June 2017 notice of the application was given to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant company is a private company that was set up in 2007 and has its registered office in Yerevan.

6. On 7 May 2007 the applicant company and company S. concluded a contract, under which the applicant company had to carry out construction work on the premises of company H.

7. On 18 January 2008 the applicant company initiated compensation proceedings against company S. in the Yerevan Civil Court ("the Civil Court"), arguing that it had completed the construction work as required by the contract of 7 May 2007, but company S. had failed to make full payment for the work.

8. On 21 January 2008 the Civil Court admitted the applicant company's claim.

9. On 20 February 2008 the Civil Court ordered a forensic technical examination of the construction work which the applicant company had carried out on the premises of company H., and stayed the proceedings. The examination was assigned to the Bureau of Forensic Examinations under the Ministry of Justice ("the Bureau"). In particular, the court ordered the experts to measure the surface area of the construction work and assess the quality of the construction work carried out.

10. On 11 March 2008 the expert in charge of conducting the forensic examination filed a letter with the Civil Court, stating that it was necessary for the Civil Court to ensure his access to the premises of company H. for the purposes of the examination, as that company was not a party to the civil proceedings.

11. On 4 April 2008 the Civil Court resumed the proceedings and summoned company H. to the proceedings as a third party.

12. On 15 May 2008 the Civil Court ordered a forensic technical examination of the construction work on the premises of company H., and again stayed the proceedings.

13. On 28 October 2008 the expert concluded that, owing to the lack of opportunity to access the premises of company H., it had not been possible to carry out the forensic examination ordered by the Civil Court on 15 May 2008.

14. On 19 November 2008 the Civil Court resumed the proceedings.

15. On 19 February 2009 the Civil Court granted the applicant company's claim.

16. On 27 February 2009, due to reorganisation of the judiciary, the Civil Court decided to transfer the case to the Kentron and Nork-Marash District Court of Yerevan.

17. On 4 March 2009 company S. appealed against the judgment of 19 February 2009.

18. On 23 April 2009 the Civil Court of Appeal quashed that judgment and remitted the case, reasoning, *inter alia*, that in the absence of an expert opinion on the questions posed by the Civil Court as regards the disputed construction work, that judgment was unfounded.

19. On 29 July 2009 the Shengavit District Court of Yerevan ("the District Court") took over the applicant company's case.

20. On 26 August 2009 the District Court ordered a forensic technical examination of the construction work on the premises of company H., and stayed the proceedings.

21. On 31 May 2010 the expert concluded that, owing to the lack of opportunity to access the premises of company H., it had not been possible to carry out the forensic examination ordered by the District Court on 26 August 2009.

22. On 7 June 2010 the District Court resumed the proceedings.

23. On 16 July 2010 the District Court ordered a forensic technical examination of the construction work on the premises of company H., and stayed the proceedings. The court ordered that the forensic examination be carried out with the help of the Department for the Enforcement of Judicial Acts ("the DEJA"). It is unclear what the outcome of that order was.

24. On 21 June 2012 the expert concluded that, owing to the lack of access to the premises of company H., it had not been possible to carry out the forensic examination ordered by the District Court on 16 July 2010.

25. On 27 June 2012 the District Court resumed the proceedings.

26. On 3 October 2012 the applicant company filed additional submissions with the District Court.

27. On the same date the District Court ordered a forensic technical examination of the construction work on the premises of company H., and stayed the proceedings.

28. On 25 November and 24 December 2014 the applicant company submitted a letter to the Bureau, enquiring about the progress of the examination ordered by the District Court.

29. On 27 December 2014 the Bureau responded by stating that the examination which had been ordered had not been carried out due to the lack of an expert in the relevant field. The Bureau also noted that it had already recruited and trained relevant experts, and the examination was expected to be carried out in January 2015.

30. On 28 February 2015 the applicant company submitted another letter to the Bureau, reminding it that the examination had not yet been carried out and informing it about the delay that the lack of an expert examination had caused in the civil proceedings.

31. On 5 May 2015 the applicant company submitted a letter to the Ministry of Justice, complaining about the delay in the civil proceedings and requesting that it take measures to expedite them.

32. On 20 May 2015 the Minister of Justice responded by stating that even though it would take one day to carry out the expert examination and approximately five days to complete the report, the examination had not been carried out for reasons such as the lack of an expert in the Bureau, the expert's inability to access the premises of company H., the excessive

workload in the Bureau, and so on. The Minister concluded by stating that the examination could be carried out by the Bureau, provided that the expert was granted access to the premises concerned.

33. On 30 June 2015, apparently after performing the technical examination, the Bureau sent the relevant expert opinion to the District Court.

34. On 9 July 2015 the District Court resumed the proceedings.

35. The District Court held a number of hearings in 2015 and 2016, and on 9 June and 2 August 2016 it also decided to conduct a new examination of the case.

36. On 10 October 2016 the District Court granted the applicant company's claim in part.

37. On 15 December 2016 company S. appealed against that judgment.

38. On 23 March 2017 the Civil Court of Appeal rejected the appeal and upheld the contested judgment.

39. No appeal on points of law was lodged against the decision of 23 March 2017, which became final.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

40. The applicant company complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal ..."

41. The applicant company further complained that it had not had at its disposal an effective domestic remedy in respect of the alleged violation of Article 6 § 1, in breach of Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

42. The Government argued that the applicant company had had an effective remedy at its disposal in respect of the alleged violation of

Article 6 § 1. It was not one single remedy, but a combination of several actions by which the applicant company could have expedited the proceedings. In particular, the applicant company had had the opportunity to indicate to the courts another expert organisation which would have been more efficient in carrying out the court-ordered expert assessment, but it had failed to do so. Furthermore, it had failed to obtain a writ of execution for the courts' decisions ordering the technical examination and submit it to the DEJA for compulsory enforcement. Lastly, the applicant company had failed to contest the decisions of the trial courts staying the proceedings before the Civil Court of Appeal. The Government argued that, since the applicant company had failed to take any of these actions, the application should be declared inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention.

43. The applicant company argued that the actions indicated by the Government could not constitute an effective remedy. It maintained that there was no effective remedy against the excessive length of the civil proceedings, and that there had been a violation of Article 6 § 1 and Article 13 of the Convention.

B. The Court's assessment

1. Admissibility

44. Taking note of the Government's objection, the Court considers that the issue of non-exhaustion of domestic remedies in this case is closely linked to the merits of the applicant company's complaint that it did not have at its disposal an effective remedy regarding the alleged violation of its right to a trial within a reasonable time. Thus, the Court finds it necessary to join the Government's objection to the merits of the complaint under Article 13 of the Convention (see, for example, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 70, 10 January 2012).

45. The Court further considers that the applicant company's complaints concerning the allegedly excessive length of the proceedings and the lack of an effective domestic remedy are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring them inadmissible have been established. They must therefore be declared admissible.

2. Merits

(a) Exhaustion of domestic remedies and alleged violation of Article 13 of the Convention

46. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be

secured. The effect of that provision is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy required by Article 13 must be "effective" in practice as well as in law. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 268, 15 December 2016).

47. As regards the "effectiveness" of remedies in length-of-proceedings cases, the Court has held that the best solution in absolute terms is indisputably, as in many spheres, prevention. Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time. Where the judicial system is deficient in this respect, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*, as does a compensatory remedy. Hence, this type of remedy is "effective" in so far as it hastens the decision by the court concerned. At the same time, a remedy designed to expedite the proceedings may not be adequate to redress a situation in which the proceedings have clearly already been excessively long. In such situations, different types of remedy may redress the violation appropriately, including a compensatory remedy. Furthermore, States may choose to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation, although they may also choose to introduce only a compensatory remedy without such remedy being regarded as ineffective (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 183-187, ECHR 2006-V, and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 74-78, ECHR 2006-V).

48. The Court notes that the delays in the proceedings in the present case were caused because of the failure, for various reasons, to produce a timely technical expert opinion, which was necessary for the resolution of the case. It was the responsibility of the domestic courts which ordered the expert examinations to satisfy that requirement by choosing the most appropriate

expert organisation, following up their own orders, and making sure that those orders were promptly implemented, if necessary through compulsory enforcement. Furthermore, it appears that the main reason for the failure to carry out a timely expert examination was the experts' inability to access the premises of company H., where the examination was to be conducted, even though the authorities attempted to secure such access with the assistance of DEJA (see paragraph 23 above). It is therefore unclear how the actions suggested by the Government could have remedied that situation. Lastly, the Court does not see how contesting the decisions staying the proceedings could have expedited the proceedings in question, taking into account that those decisions were the result rather than the cause of the failure to carry out the required expert examinations. Moreover, contesting the decisions staying the proceedings before the Civil Court of Appeal, aside from being unlikely to expedite the proceedings, could itself have become a factor delaying those proceedings (see, for example, *Efimenko v. Ukraine*, no. 55870/00, § 64, 18 July 2006). The Court therefore considers that the combination of actions indicated by the Government did not constitute an "effective remedy" against lengthy proceedings within the meaning of Article 13 of the Convention.

49. The Court further notes that the Government did not suggest any other procedure available in the Armenian domestic system at the material time that could have constituted an effective remedy capable of either expediting the proceedings in question and/or providing redress for the delays which had already occurred.

50. The Court therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies and concludes that the applicant company did not have an effective domestic remedy as regards the length of the civil proceedings concerned.

51. Accordingly, there has been breach of Article 13 of the Convention.

(b) Article 6 § 1 of the Convention

52. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, 27 June 2000).

53. The period to be taken into consideration began on 18 January 2008, when the applicant company initiated compensation proceedings before the Yerevan Civil Court, and ended with the decision of the Civil Court of Appeal dated 23 March 2017. It thus lasted nine years and two months over three levels of jurisdiction, the trial and the appellate courts examining the case twice. It must be emphasised that the lengthiest delay of seven years and five months took place between 23 April 2009 and 10 October 2016,

when the case was pending before the District Court and the parties were waiting to receive the expert opinion which had been ordered.

54. The Court notes that the delay in the present case was not attributable to the applicant company. Instead, it was attributable to the domestic courts, which ordered five technical expert examinations over the course of nine years that were necessary for the resolution of the case, but failed to ensure that four of those orders were implemented.

55. The Court further notes that the case was not of particular complexity. In this regard, the Court emphasises that the letter from the Ministry of Justice dated 20 May 2015 stated that it would take only one day to carry out the required technical examination and five days to compile the expert opinion. However, the expert opinion initially ordered on 20 February 2008 was finalised and submitted to the District Court only on 30 June 2015.

56. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, among other authorities, *Capuano v. Italy*, 25 June 1987, §§ 30-35, Series A no. 119, and *Sürmeli v. Germany* [GC], no. 75529/01, §§ 128-134, ECHR 2006-VII).

57. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that, in the instant case, the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

58. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

60. The applicant company claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

61. The Government contested the claim on the grounds that it was excessive.

62. The Court considers that the applicant company must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant company EUR 2,400 under that head.

B. Costs and expenses

63. The applicant company also claimed EUR 860 for the costs and expenses incurred before the domestic courts, EUR 2,220 for those incurred before the Court, and EUR 16 for postal services.

64. The Government contested the claim. In particular, as regards the costs incurred before the domestic courts, they argued that there was no causal link between the claim and the alleged violation of the applicant company's right.

65. The Court agrees that none of the costs of the domestic proceedings appear to have been incurred in an attempt to prevent or redress the violation found. However, considering that unreasonable delays in proceedings entail an increase in an applicant's costs (see, among other authorities, *Maurer v. Austria*, no. 50110/99, § 27, 17 January 2002, and *Sürmeli*, cited above, § 148), the applicant company's claim under that head does not appear unreasonable. Therefore, regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

66. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible and joins the Government's objection as to non-exhaustion of domestic remedies to the merits;

2. *Holds* that there has been a violation of Article 13 of the Convention and dismisses the Government's objection as to non-exhaustion of domestic remedies;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 31 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President