



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

Communicated on 23 January 2018

FIRST SECTION

Application no. 12381/16
Marina POGHOSYAN
against Armenia
lodged on 26 February 2016

STATEMENT OF FACTS

The applicant, Ms Marina Poghosyan, is an Armenian national who was born in 1962 and lives in Yerevan. She is represented before the Court by Ms H. Harutyunyan, a lawyer practising in Yerevan.

A. The circumstances of the case

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

The applicant is the chairperson of a human rights NGO.

On 17 March 2014 four bailiffs from the Department for the Execution of Judicial Acts, Mr G.H., Mr A.I., Mr S.S. and Mr S.Y., accompanied by two police officers, were to enforce a writ of execution issued by a court in a civil case, according to which the two plaintiffs, Mrs K.M. and Mrs Z.M., were to be evicted from the premises of a basement, which they leased from a third person and which they used both as their residence and as a shop. It appears that their next-of-kin, Mrs Z.G., who lived with them in the shop and helped them run it, was present at the time of the eviction, along with the applicant, who acted as her representative. It further appears that both K.M. and Z.M. complied with the bailiffs' order to vacate the premises, whereas Z.G., assisted by the applicant, refused to do so, arguing that her name was not indicated in the writ of execution. The bailiffs then had to apply force to make Z.G. and the applicant leave the premises so that they could seal the shop. The applicant alleges that she was carried out of the shop by the bailiffs and thrown onto the stairs, as a result of which she injured her leg.

On the same date, the applicant sought medical assistance at Clinic no. 3 where she was diagnosed with a swelling on the ankle joint, with partial loss of mobility and pain upon palpation. The applicant also filed a crime report with Yerevan Central Police Station in connection with the above-mentioned events.

On an unspecified date, an investigator from the Central Police Station ordered that the applicant undergo a forensic medical examination.

On 18 March 2014 the applicant was examined by a forensic expert who concluded that she had bruising of the soft tissues of the ankle joint area and overstrained ligaments, inflicted by a blunt object. It could not be ruled out that the injuries had been sustained in circumstances such as those alleged by the applicant.

On 27 March 2014 the applicant's crime report was transferred to the Kentron and Nork Marash District Prosecutor's Office which later transferred it to the Special Investigative Service (SIS).

On 14 April 2014 an SIS investigator instituted a criminal case under Article 309 § 2 of the Criminal Code (exceeding official authority, accompanied with violence).

On 18 April 2014 the applicant was formally recognised as a victim.

On unspecified dates the investigator questioned the applicant, Z.G. and Z.M. who submitted that the bailiffs, immediately after arriving at the shop, had ordered them to vacate the premises and started loading all the items present in the shop into their removal truck, including their personal items. They had unsuccessfully objected, while the applicant and Z.G. had also refused to leave the shop. After having removed all the items, the bailiffs had once again ordered the applicant and Z.G. to vacate the premises, which they had refused to do. The bailiffs had then carried the applicant out of the shop and had thrown her onto the stairs. Z.G. had been removed from the shop in a similar manner.

The investigator also questioned the four bailiffs, who submitted that both the applicant and Z.G. had refused to comply with their orders to vacate the premises, both physically and verbally, as a result of which bailiff G.H. had had no other choice but to carry the applicant out of the shop. There had been no blows administered or injuries caused and there had been no scuffles. Physical force had been applied only after the applicant had been warned that such force would be used if she refused to comply with their orders. The applicant had not been "thrown out" of the shop but simply carried out. It appears that the records of the interviews conducted with the bailiffs were drafted near verbatim.

On 29 July 2014 the investigator discontinued the criminal proceedings for lack of criminal conduct proscribed by Article 309 § 2, or any other Article of the Criminal Code, in the bailiffs' actions.

On 6 August 2014 the General Prosecutor's Office quashed that decision on the ground that the bailiffs' actions went beyond the scope of the writ of

execution and, according to the case-law of the Civil Court of Appeal, were therefore unlawful and exceeded their authority.

On 12 August 2014 the criminal proceedings were resumed.

On 27 August 2014 the SIS investigator once again discontinued the criminal case. He held at the outset that the case-law of the Civil Court of Appeal did not have the force of a precedent under Armenian law. He then went on to confirm his earlier findings, according to which the aggressive behaviour of the applicant and Z.G., who enjoyed no rights in respect of the property subject to eviction, had prevented the bailiffs from performing their lawful duties and enforcing a binding court judgment. The bailiffs therefore had no choice but to remove them from the premises by using physical force, namely by lifting them and carrying them out of the basement. As regards any bruises or scratches sustained by the applicant and Z.G., these could have been sustained only as a result of their own aggressive and confrontational behaviour. By virtue of section 47 of the Law on the Department for the Enforcement of Judicial Acts, a bailiff was entitled to use force for the purpose of overcoming resistance shown to him. The bailiffs' actions had therefore been lawful.

On 23 October 2014 the applicant contested that decision before the General Prosecutor's Office, which dismissed her complaint by its decision of 3 November 2014.

On an unspecified date the applicant applied to the courts. She alleged, *inter alia*, that the use of force against her had been unlawful, unjustified and disproportionate and that the authorities had failed to investigate her allegations adequately.

On 6 March and 28 April 2015 respectively the trial court and the Criminal Court of Appeal dismissed the applicant's appeals and upheld the decision of the investigator.

On 26 May 2015 the applicant lodged an appeal on points of law, which was declared inadmissible for lack of merit by a decision of the Court of Cassation of 31 August 2015.

B. Relevant domestic law

Article 309 § 2 of the Criminal Code provides that acts intentionally committed by an official which clearly exceed his authority and cause significant damage to a third party, resulting unintentionally in serious consequences, are punishable by six to ten years' imprisonment and a ban on holding certain posts or carrying out certain activities for up to three years.

Section 47 of the Law on the Department for the Enforcement of Judicial Acts provides that a bailiff is entitled to use force for the purpose of overcoming resistance shown to him or preventing an assault related to the performance of his official duties.

Section 49 of the same Law provides that a bailiff is entitled to use force if other measures fail to ensure the performance of duties entrusted to him. If applying force, a bailiff is obliged: (a) to warn of his intention to use force, giving sufficient time for an individual to comply with his orders, except for cases where a delay will pose an immediate risk to his life or limb; (b) to apply force proportionately to the nature and degree of dangerousness of the offence or resistance; and (c) to provide first aid to those who sustain injuries.

For a summary of other relevant domestic provisions, see the judgment in the case of *Zalyan and Others v. Armenia* (see nos. 36894/04 and 3521/07, §§ 148-54 and § 172, 17 March 2016).

COMPLAINTS

The applicant complains that the treatment to which she was subjected by the bailiffs breached her rights guaranteed by Article 3 of the Convention and that the authorities failed to carry out an effective investigation into that fact.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to treatment incompatible with the guarantees of Article 3 of the Convention through the actions of the bailiffs?

2. Having regard to the procedural protection from ill-treatment (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?