



Advisory opinion concerning the statute of limitations and torture

The European Court of Human Rights has today delivered, unanimously, its opinion in response to a request (no. P16-2021-001) for an advisory opinion made by the Court of Cassation of Armenia.

The Court concluded that Article 7 precluded the revival of a prosecution in respect of an offence which has become time-barred.

Specifically with regards to the case in question before the Armenian courts, it was for the national courts to determine whether there was a sufficiently clear and foreseeable legal basis within the meaning of Article 7 of the European Convention (no punishment without law) for the offence in question not to be time-barred pursuant to rules of international law having legal force in the domestic legal system.

[Protocol No. 16](#) enables member States' highest national courts and tribunals to ask the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the Protocols thereto. The advisory opinions are not binding. The Court has delivered three other advisory opinions since Protocol No. 16 came into force on 1 August 2018.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

The background to the case and the domestic proceedings

The advisory opinion requested by the Court of Cassation of Armenia relates to the execution of the [Virabyan v. Armenia](#) (case no. 40094/05) judgment delivered by the European Court in 2012, in which the applicant's "ill-treatment" in police custody in 2004 was qualified as "torture" by the Court. Following the judgment, a criminal case was instituted against two police officers in 2016 but dropped ten months later on the grounds that the limitation period had expired.

The criminal case was resumed in late 2017, the prosecutor finding that the investigator had failed to examine the acceptability of terminating the proceedings in the context of international law, including the requirements of Article 3 (prohibition of torture/inhuman or degrading treatment) of the European Convention on Human Rights. In February 2019, the first-instance court found both officers guilty of exceeding authority accompanied with use of violence but exempted them from "criminal responsibility", and thus from sentencing, by applying the limitation period set down in the Criminal Code. Following appeals by both the prosecutor and the accused, the Criminal Court of Appeal, on 4 July 2019, upheld the judgment.

On 30 August 2019 the prosecutor lodged an appeal on points of law, arguing, among other things, that the application of limitation periods in respect of acts of torture was prohibited under Article 3 of the Convention. He argued in particular for the need to determine whether there was an absolute prohibition on application of limitation periods in cases of torture and other forms of ill-treatment, in the light of the European Court's case-law and the UN Convention Against Torture.

On 27 January 2021 the Court of Cassation concluded that in order to rule on the appeal it needed an advisory opinion from the Court taking into account, on the one hand, the legal standards developed by the European Court and other international bodies regarding the prohibition of torture and the requirement to punish such acts, and, on the other hand, the importance of observing the requirements of Article 7 (no punishment without law) of the Convention.

Procedure

The request for an advisory opinion was introduced on 11 March 2021. It was accepted by the Panel of the Grand Chamber on 10 May 2021. A Grand Chamber was formed on 12 May in accordance with Rule 24 § 2 (h) of the Rules of Court.

The President of the Grand Chamber invited the parties to the domestic proceedings before the Armenian Court of Cassation, namely the General Prosecutor's Office and the two defendants in the relevant criminal case, to submit written observations by 2 July 2021.

This was the second time that Armenia had sought an advisory opinion under Protocol No. 16 to the European Convention on Human Rights. The Armenian Constitutional Court made a request in August 2019, and the Court delivered its [opinion](#) in May 2020.

The Court's opinion

Firstly, the Court emphasised that the core issue was the trial court's finding that the defendants had committed a violent offence but exempting them from criminal responsibility by virtue of the ten-year limitation period. The Court of Cassation had asked the Court to clarify whether it would be compatible with the defendants' rights under Article 7 of the Convention if the domestic courts were to refrain from applying the limitation period applicable in their case pursuant to international law, including Article 3 of the Convention, relating to the prohibition of torture and other forms of ill-treatment and the requirement to punish such acts.

Regarding Article 3, the Court reiterated that, according to its case-law, delays in procedure attributable to inaction on the part of the authorities and leading to the end of a limitation period could imply a violation of the Convention. Furthermore, States had an obligation under Article 3 to provide for a crime of torture. The Court has stated that having a statute of limitation for torture offences sat "uneasily with its case-law concerning torture or other ill-treatment".

However, it would be unacceptable for the Armenian authorities to compensate for the failure to investigate torture properly pursuant to Article 3 at the expense of the guarantees of Article 7, one of which is that the criminal law must not be construed extensively to an accused's detriment. There was no obligation to revive a limitation period.

Regarding Article 7, the Court reiterated that the principle of no punishment without law was central to the rule of law. Offences and penalties had to be clearly defined and no derogation was permissible, and the effects of the relevant law and resulting case-law had to be sufficiently foreseeable. It was in part the role of the courts to dissipate the interpretational doubts that remained, resulting in gradual clarification. The Court stated that limitation periods aided legal certainty and finality and helped prevent abuses of defendants' rights. The Court highlighted that in its case-law violations had been found following convictions for offences that had been time-barred.

Overall, the Court gave the following opinion:

"Where a criminal offence is subject to a statute of limitation pursuant to the domestic law and the applicable limitation period has already expired, Article 7 of the Convention precludes the revival of a prosecution in respect of such an offence. It is first and foremost for the national courts to determine whether rules of international law having legal force in the national legal system can provide for a sufficiently clear and foreseeable legal basis within the meaning of Article 7 of the Convention to conclude that the criminal offence in question was not subject to a statute of limitation."

The aim of [Protocol No. 16](#) is to enhance interaction between the Court and national authorities and

thereby reinforce the implementation of Convention rights and freedoms by requesting courts in their adjudication of pending cases.

Protocol No. 16 allows the highest courts and tribunals, as specified by the member States that have ratified it, to request advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the European Convention or its Protocols.

An advisory opinion may only be sought in the context of a case pending before the requesting court. The acceptance or refusal of a request is left to the Court's discretion. A panel of five judges decides whether to accept the request, giving reasons for any refusal.

Advisory opinions, which are given by the Grand Chamber are not binding. The panel and the Grand Chamber include ex officio the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains. Judges are entitled to deliver a separate opinion.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.