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

FIRST SECTION

DECISION

Application no. 21238/18
Lyudvig BARSEGHYAN
against Sweden

The European Court of Human Rights (First Section), sitting on 10 May 2022 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Erik Wennerström,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 21238/18) against Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 23 April 2018 by an Armenian national, Mr Lyudvig Barseghyan, who was born in 1983 and lives in Yerevan ("the applicant"), who had been granted legal aid and was represented by Mr M. Safaryan, a lawyer practising in Stockholm;

the decision to give notice of the application to the Swedish Government ("the Government"), represented by their Agent, Mr A. Engman, of the Ministry for Foreign Affairs;

the observations submitted by the respondent Government;

the comments submitted by the Government of Armenia, who had exercised their right to intervene in the proceedings under Article 36 § 1 of the Convention;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant is the brother of D.B. and complained under Article 2 of the Convention in relation to the circumstances in which his brother had died while in police custody and the investigation of those circumstances.

2. On 6 February 2017 D.B. and two other persons were arrested by the police on suspicion of theft. Upon arrival at the police station, D.B. did not

get out of the police car himself, and he was carried into a cell. During the next hour, the staff at the police station checked on D.B. every five or six minutes. A total of thirteen checks were carried out, during which D.B. was found to be lying on his stomach or side and breathing normally. One hour after D.B. was placed in the cell, a police officer entered to ascertain what language he spoke so that an interpreter could be contacted. He found D.B. unconscious. Emergency treatment was initiated and an ambulance was called, but D.B. was later pronounced dead at the scene. An autopsy revealed the cause of death to be a spontaneous brain haemorrhage, possibly in combination with asphyxiation as a result of inhaling vomit. There were no signs of trauma and D.B. was found to have died of natural causes.

3. The prosecutor conducted a routine investigation into D.B.'s death. The cell was closed off and photographed. The arrest record, police reports about the incident and autopsy results were gathered. The staff at the police station and the police officers who had been in contact with D.B. were interviewed. The arresting officers stated that they had not suspected that D.B. was ill. When carrying him from the police car, they had thought that he was offering passive resistance, since he had held his head up and looked around. A large number of checks had been conducted because D.B. did not speak Swedish or English and was therefore unable to communicate with the arresting officers. The police also interviewed one of the men who had been arrested with D.B. (V.P.), who stated that D.B. had vomited prior to the arrest. The police were initially unable to contact the third man who had been arrested with D.B. Through the Armenian Embassy, the police learned that V.P. was residing in Russia and was willing to speak to the authorities. However, a request for legal assistance would have to be sent to Russia for an interview to be conducted. No such request was sent.

4. On 27 April 2017 the investigation by the prosecutor was terminated. The prosecutor held that D.B.'s death had not been the result of police conduct, nor had the police failed to safeguard D.B.'s life adequately after he was detained. D.B. had been supervised more closely than required by the rules and there had been no indication that he was in poor health prior to his being found unconscious.

5. By letter dated 21 March 2017, D.B.'s estate claimed compensation from the Chancellor of Justice (*Justitiekanslern*), alleging that the police had failed to protect D.B.'s life. On 19 June 2017 the Chancellor of Justice noted that the matters complained about did not appear to fall within her competence and sent the case on to the Police Authority.

6. On 24 October 2017 the Police Authority rejected the compensation claim. The estate's allegation that D.B. had been in visibly poor health during the journey to the police station was unsubstantiated. When he was arrested, D.B. had been sweaty and out of breath, had urinated on himself, and had appeared to be cold. However, these signs were consistent with the fact that he had been trying to outrun the police for about forty minutes prior to being

arrested. According to the police, D.B. had got into the police car of his own accord. During the journey he had only asked for water.

7. Following the Police Authority's rejection of the compensation claim, neither the applicant, nor any other person on behalf of D.B.'s estate, pursued the matter further by instituting proceedings before the courts.

8. In his application lodged with the Court, the applicant complained that the police had acted inadequately and failed to safeguard D.B.'s life. Furthermore, the applicant maintained that the police did not in general have sufficient knowledge of how to deal with persons in poor health. He also complained that the investigation carried out by the Police Authority had not been objective and impartial and that it had suffered from shortcomings because V.P. had not been questioned as a witness, and as he was of the view that leading questions had been posed to other witnesses. The applicant asserted that D.B.'s estate was entitled to compensation.

THE COURT'S ASSESSMENT

9. The Government objected to the admissibility of the application on the grounds that all domestic remedies had not been exhausted as required by Article 35 § 1 of the Convention.

10. The Government maintained, firstly, that the claims made to the Chancellor of Justice and the Police Authority were not the same complaints as the applicant had since lodged with the Court. In addition, the claim presented to the Chancellor of Justice had not fallen within her competence, and presenting a claim for compensation to the Police Authority did not entail the exhaustion of domestic remedies, given that the claim could be brought before the domestic courts.

11. The Government pointed out that Swedish legislation contained a specific provision on liability for damages as a consequence of violations of the Convention and that even before that legislation had been enacted the Supreme Court had established a liability to that effect through its case-law. On the basis of that case-law from the Supreme Court, the Court had already confirmed that potential applicants in Sweden could, as a general rule, be expected to lodge a domestic claim to seek compensation for alleged breaches before applying to the Court (see *Ruminski v. Sweden* (dec.), no. 10404/10, 21 May 2013). The applicant's reference to the costliness of court proceedings could not suffice to absolve him from the obligation to exhaust domestic remedies.

12. The applicant, who did not submit observations in the course of the proceedings before the Court, but who reiterated his intention to pursue the application, made no submissions in response to the Government's above objection. On the application form he had responded "yes" to the question of whether there existed remedies of which he had not availed himself, and he

had stated that the possibility of bringing the case before domestic courts existed, but would be unjustifiable because of the costs involved.

13. The Government of Armenia, the third-party intervener, did not make any comments either concerning the respondent Government's objection to the admissibility of the application on grounds of non-exhaustion.

14. The Court reiterates that it is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection (see, for example, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014, and *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 115, ECHR 2015). To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success.

15. As to the instant case, the Court notes that the applicant's complaint under Article 2 of the Convention concerned the circumstances of his brother's death, the police allegedly not having dealt adequately with the situation and the alleged inadequate investigation of those circumstances. With regard to the latter, the applicant has not provided any materials or information to indicate that he requested the police to take further investigative steps or complained about specific investigative measures not being taken in any manner other than by way of the compensation claim subsequently lodged with the Police Authority. That being the case, the Court observes that at the time when he applied to the Court, the relevant remedies under Article 35 § 1 would be of a declaratory and compensatory nature (see, in contrast, *S.J.P. and E.S. v. Sweden* (dec.), no. 8610/11, § 72, 16 December 2014). The application is thus of the type in respect of which the Court has held that lodging a claim for compensation could normally be expected before an application against Sweden was lodged with the Court (see *Ruminski*, cited above).

16. In *Ruminski*, cited above, § 38, the Court also held that where the option of lodging a complaint with the Chancellor of Justice existed alongside the possibility of suing the State before the domestic courts, the applicant could in principle choose which of the two avenues to take. The Court noted in that decision that there was no reason to believe that the ordinary courts or the Chancellor of Justice, for some exceptional reason, would refuse to consider the violations alleged in that case (ibid., § 39).

17. In the instant case, however, the Chancellor of Justice could not consider the case and the applicant was informed of that fact; the sole avenue was accordingly that of the courts. In that connection, the applicant has not contested the information provided by the respondent Government to the effect that he, as D.B.'s brother, could in principle have applied to the domestic courts for compensation, supported by reference to provisions of domestic law which gave the courts jurisdiction to impose liability for pecuniary as well as non-pecuniary damages, save for his general statement that the costs of court proceedings were unjustifiable. The Court does not consider that this general reference to the costs involved in lawsuits, about which no further specific information has been provided either in relation to the costs as such or to any difficulties in financing them, could suffice to absolve the applicant from the obligation to exhaust domestic remedies.

18. In the circumstances described above, the Court concludes that the application must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 June 2022.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President