

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

FOURTH SECTION

CASE OF AVUSHYAN v. ARMENIA

(Application no. 34684/13)

JUDGMENT

STRASBOURG

31 January 2023

This judgment is final but it may be subject to editorial revision.



In the case of Avushyan v. Armenia,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Anja Seibert-Fohr*, President*,
Armen Harutyunyan,
Ana Maria Guerra Martins*, judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 34684/13) 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") on 21 May 2013 by an Armenian national, Mr Marzpetuni Avushyan, born in 1971 and, at the material time, detained in Nubarashen Remand Prison ("the applicant") who was represented by Mr T. Hayrapetyan, a lawyer practising in Yerevan;

the decision to give notice of the complaints concerning the length of the applicant's detention, the alleged lack of relevant and sufficient reasons for the applicant's detention and the alleged lack of speedy review of lawfulness of the applicant's detention to the Armenian Government ("the Government"), represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 10 January 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the grounds and length of the applicant's detention and the speediness of examination of an application for release lodged by him.

2. On 5 February 2010 the applicant was arrested and on 8 February 2010 he was detained by the Armavir Regional Court (hereafter, the Regional Court) for a period of two months on suspicion of having committed robbery. It was stated that there were sufficient grounds to believe that the applicant would abscond, avoid criminal responsibility, commit a new offence and obstruct the proceedings. Thereafter his pretrial detention was extended by the Regional Court on the same grounds four times, on a bi-monthly basis.

3. On an unspecified date the applicant lodged an appeal against the last of those four decisions taken on 27 September 2010.

4. On 19 November 2010 the Criminal Court of Appeal dismissed the applicant's appeal, with a similar reasoning.

5. In the meantime, on 29 October 2010, after the investigation was completed and the case was transferred to a court, the Regional Court decided

to set the case down for trial, stating that the applicant's detention was to remain unchanged.

6. On 27 December 2011 the Regional Court found the applicant guilty and sentenced him to nine years' imprisonment.

7. On 11 July 2012 the Criminal Court of Appeal quashed the applicant's conviction and remitted the case.

8. On 4 September 2012 the Regional Court decided to set the case down for trial, stating that the applicant's detention was to remain unchanged.

9. On 30 October 2012 the applicant lodged an application for release.

10. On the same date the Regional Court decided to adjourn the examination of that application until "essential circumstances necessary to make a ruling on the application were clarified". According to the applicant, the judge stated that it was necessary to question the injured parties and witnesses and to examine all the evidence before examining the application.

11. On 10 April 2013 the Regional Court examined the application of 30 October 2012 and dismissed it on the same grounds as before.

12. On 6 February 2014 the Regional Court found the applicant guilty and sentenced him to nine years' imprisonment. His conviction was upheld by the higher courts.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

13. The Government claimed that the applicant had failed to exhaust the domestic remedies as required by Article 35 § 1 of the Convention. In particular, he had not contested the decisions of the Regional Court before the Criminal Court of Appeal during the pre-trial stage and had lodged only one application for release during the trial stage. Furthermore, he had not lodged an appeal on points of law against the decision of the Criminal Court of Appeal of 19 November 2010 (see paragraph 4 above).

14. As regards the latter argument, the Court has already found that an appeal on points of law was not an effective remedy in detention cases (see, among other authorities, *Arzumanyan v. Armenia*, no. 25935/08, §§ 28-32, 11 January 2018). As regards the remainder of the Government's objection, the Court considers that it is closely linked to the substance of the applicant's complaint and must be joined to the merits.

15. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

16. The general principles relevant for this case concerning the right to trial within a reasonable time have been summarised in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91, 5 July 2016).

17. In the present case, the Court notes that the domestic courts, when ordering and extending the applicant's detention, limited themselves to repeating the grounds justifying the detention in an abstract and stereotyped manner, without indicating any specific reasons as to why they considered those grounds to be well-founded or trying to refute the applicant's arguments (see paragraphs 2, 5, 8 and 11 above). The Court has already found this to be a recurring problem in Armenia giving rise to a violation of Article 5 § 3 of the Convention (see *Ara Harutyunyan v. Armenia*, no. 629/11, § 58, 20 October 2016). There are no grounds in the present case to depart from those findings. The Court therefore concludes that the domestic courts failed to provide relevant and sufficient reasons for the applicant's detention. Having reached this conclusion, the Court does not find it necessary also to examine as to whether the domestic authorities had failed to display "special diligence" in the conduct of the proceedings, as alleged by the applicant.

18. As regards the Government's objection of non-exhaustion, the Court reiterates that a person alleging a violation of Article 5 § 3 of the Convention with respect to the length of his detention complains of a continuing situation which should be considered as a whole and not divided into separate periods (see *Lyubimenko v. Russia*, no. 6270/06, § 62, 19 March 2009, and *Polonskiy v. Russia*, no. 30033/05, § 132, 19 March 2009). Following his placement in custody on 8 February 2010 the applicant continuously remained in pre-trial detention. Although he did not lodge appeals against the first three detention orders issued by the Regional Court, which were amenable to appeal (see paragraph 2 above), he did, nevertheless, lodge an appeal with the Criminal Court of Appeal against the fourth extension order of 27 September 2010 (see paragraph 3 above). He thereby gave an opportunity to the Court of Appeal to consider whether his detention was compatible with his Convention right to trial within a reasonable time or release pending trial. The Court of Appeal had to assess the necessity of further extension in the light of the entire preceding period of detention, taking into account how much time had already been spent in custody (compare *Lyubimenko*, cited above, § 62, and *Polonskiy*, cited above, § 132; see also *Chumakov v. Russia*, no. 41794/04, §§ 149-51, 24 April 2012). Furthermore, even if the applicant had already spent about eight months in detention by the time his appeal was lodged, the Court notes that the decision of the Court of Appeal taken upon that appeal – similarly to the decisions of the Regional Court – was couched in abstract and stereotyped terms without containing any specific reasons for the applicant's continued detention (see paragraph 4 above), this apparently being the established practice (see paragraph 17 above). Thus, the Court has no reasons to believe that, had the applicant lodged an appeal against one of the earlier detention orders (see paragraph 2 above), he would have achieved a different result and secured an earlier release.

19. As to the applicant's detention during the trial stage, the Court notes that the decisions concerning the applicant's detention taken at that stage of

the proceedings were not amenable to appeal (see paragraphs 5, 8 and 11 above). The applicant did, however, have the right to file an application with the trial court seeking to be released and he did avail himself of that right by lodging such an application during his trial (see paragraph 9 above and, *a contrario*, *Martirosyan v. Armenia*, no. 23341/06, §§ 45-46, 5 February 2013).

20. In sum, the applicant can be considered to have complied with the requirements of Article 35 § 1 of the Convention by lodging an appeal with the Criminal Court of Appeal at the pre-trial stage and filing an application for release during his trial. The Court therefore rejects the Government's claim of non-exhaustion.

21. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

22. The applicant also raised another complaint which is covered by the well-established case-law of the Court. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. Accordingly, it must be declared admissible. Having examined all the material before it, the Court concludes that it discloses a violation of Articles 5 § 4 of the Convention in the light of its case-law set out, among others, in *Ilnseher v. Germany* ([GC], nos. 10211/12 and 27505/14, §§ 251-56, 4 December 2018). It notes that it took the Regional Court five months and ten days to examine the applicant's application for release, without advancing any convincing reasons to justify such an exceptionally long delay (see paragraph 11 above).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 67,300 euros (EUR) in respect of non-pecuniary damage and EUR 2,380 in respect of costs and expenses incurred before the Court.

24. The Government contested the applicant's claims.

25. The Court awards the applicant EUR 2,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

26. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000 for costs and expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's objection of non-exhaustion to the merits of the applicant's complaint under Article 5 § 3 of the Convention and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention because of the failure to provide relevant and sufficient reasons for the applicant's detention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention because of the failure to examine speedily the applicant's application for release;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one 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;

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

Done in English, and notified in writing on 31 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu Acting Deputy Registrar	Anja Seibert-Fohr President