

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

FOURTH SECTION

CASE OF MIKAYELYAN v. ARMENIA

(Application no. 40604/17)

JUDGMENT

STRASBOURG

26 September 2024

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



In the case of Mikayelyan v. Armenia,

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

Branko Lubarda, *President*,
Anne Louise Bormann,
Sebastian Răduleţu, *judges*,
and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 5 September 2024,

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

PROCEDURE

1. The case originated in an application against Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 30 May 2017.

2. The applicant was represented by Ms A. Chatinyan, a lawyer practising in Vanadzor.

3. The Armenian Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of the lack of relevant and sufficient reasons for detention. He also raised other complaints under the provisions of the Convention.

THE LAW

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

6. The applicant complained principally of the lack of relevant and sufficient reasons for detention. He relied on Article 5 § 3 of the Convention.

7. The Court reiterates that, according to its established case-law under Article 5 § 3 of the Convention, the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings. The Court has also held that justification for any period of detention, no matter how short, must be

convincingly demonstrated by the authorities. When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures for ensuring this person's appearance at trial. The requirement for the judicial officer to give "relevant" and "sufficient" reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest (see, among other authorities, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87 and 102, 5 July 2016).

8. In the leading case of *Ara Harutyunyan v. Armenia* (no. 629/11, §§ 54-59, 20 October 2016), the Court has already found a violation in respect of issues similar to those in the present case.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of this complaint. Having regard to its case-law on the subject, the Court considers that in the instant case the domestic courts failed to provide relevant and sufficient reasons for the applicant's pre-trial detention.

10. This complaint is therefore admissible and discloses a breach of Article 5 § 3 of the Convention.

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

11. The applicant submitted another complaint which also raised issues under Article 5 § 5 of the Convention, given the relevant well-established case-law of the Court (see appended table). The Government submitted that there was no violation of Article 5 § 5 of the Convention, arguing that the applicant had had the right under domestic law to seek an acknowledgement of a violation of his rights guaranteed under Article 5 of the Convention and to claim compensation in that regard following the legislative amendments introduced in 2014. The Court observes, however, that the Government failed to support their arguments with any examples of domestic practice relevant to the issues raised in the applicant's particular case (compare *Vardan Martirosyan v. Armenia*, no. 13610/12, §§ 73-74, 15 June 2021). It therefore sees no grounds to reach a different conclusion in the present case. It follows that 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 ground. Having examined all the material before it, the Court concludes that it also discloses a violation of the Convention in the light of its findings in, *mutatis mutandis*, *Khachatryan and Others v. Armenia* (no. 23978/06, §§ 155-59, 27 November 2012) and *Vardan Martirosyan* (cited above, §§ 70-75).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. Regard being had to the documents in its possession and to its case-law (see, in particular, *Ara Harutyunyan,* cited above, § 66), the Court considers it reasonable to award the sums indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 5 § 3 of the Convention concerning the lack of relevant and sufficient reasons for detention;

3. *Holds* that there has been a violation of the Convention as regards the other complaint raised under the well-established case-law of the Court (see appended table);

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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.

Done in English, and notified in writing on 26 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Branko Lubarda
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 5 § 3 of the Convention (lack of relevant and sufficient reasons for detention)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Court which issued detention order/ examined appeal	Specific defects	Other complaints under well-established case-law	Amount awarded for non-pecuniary damage per applicant (in euros) [1]	Amount awarded for costs and expenses per application (in euros)[2]
40604/17 30/05/2017	**Gagik MIKAYELYAN** 1984	Chatinyan Ani Vanadzor	02/09/2016 - 02/02/2017	Arabkir and Kanaker-Zeytun District Court of Yerevan Criminal Court of Appeal	fragility of the reasons employed by the courts	Art. 5 (5) - lack of, or inadequate compensation, for the violation of Article 5 § 3 of the Convention	2,000	250

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.