

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

THIRD SECTION

DECISION

Application no. 13234/09
Sevak KHACHATRYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 6 December 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 2 March 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Sevak Khachatryan, is an Armenian national who was born in 1978 and lives in Yerevan. He is represented before the Court by Mr E. Varosyan, a lawyer practising in Yerevan.

A. The circumstances of the case

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

1. The applicant's arrest and detention

3. The applicant worked as a police investigator. On 10 July 2008 he and his collegue were charged with two aggravated counts of bribe-taking (Article 311 §§ 3(2) and 4(2) of the Criminal Code). On the same day, the investigator lodged a motion with the Kentron and Nork-Marash District Court of Yerevan seeking to detain the applicant on remand. The motion stated that the applicant, in order to re-qualify an offence under his investigation to a more lenient one, took a large sum of money as a bribe from P., the mother of the person charged with that offence. The investigator's motion also mentioned that, immediately after taking the bribe, the applicant was caught by National Security officers who found the money in his office and confiscated it.

4. On the same day the District Court, on the basis of an investigator's motion, detained the applicant on remand for two months. In doing so, the District Court referred to the nature and the gravity of the imputed offence and stated that the applicant, if he remained at large, might abscond or obstruct the criminal proceedings. It also refused to release him on bail for the same reasons. As to the existence of a reasonable suspicion, the District Court referred to the wiretappings of the discovery of the bribe money in the applicant's office as well as P.'s statement and testimonies, submitted to it during the examination of the motion.

5. The applicant lodged an appeal against this decision, which was left unexamined by the Criminal Court of Appeal on 21 July 2008 as lodged outside the prescribed time-limit.

6. The applicant then lodged a similar appeal with the Court of Cassation, which, in turn, left it unexamined on the ground that the decision of the District Court was not subject to appeal on points of law.

2. Two extensions of the applicant's detention

7. On 19 August 2008 the investigator decided to drop one aggravated count of bribe-taking against the applicant and to add a new charge of an aggravated count of possession of psychotropic substances (Article 268 § 2(2) of the Criminal Code). In adding the charge, the investigator referred to the fact that several psychotropic substances had been discovered in the applicant's office at the time when the bribe money was confiscated.

8. On 27 August 2008 the Kentron and Nork-Marash District Court of Yerevan, on the basis of an investigator's motion, prolonged the applicant's detention for two months, namely till 7 November 2008, on the same grounds as those invoked in its previous decision. It appears that during the proceedings, the investigator submitted to the District Court and the applicant a record of the discovery of the bribe money and transcripts of the wiretapped conversations in the applicant's office.

9. The applicant lodged an appeal against this decision claiming, *inter alia*, that no proper reasons for his detention on remand had been invoked and that the record of the discovery of the bribe money and the transcripts of wiretapped conversations, which had been produced by the investigator during the hearing, were not sufficient to raise a reasonable suspicion. He further alleged that the equality of arms was violated since the District Court had based its decision on the materials of the case file, which had not been produced during the trial.

10. On 18 September 2008 the Criminal Court of Appeal decided to dismiss the applicant's appeal finding that the reasonable suspicion against the applicant was based on the record of the discovery of the bribe money and the transcripts of wiretapped conversations, which had been submitted by the investigator during the hearing. It also held that the District Court's decision to detain the applicant on remand was well-reasoned.

11. The applicant lodged an appeal on points of law against the decision of the Court of Appeal, which was declared inadmissible for lack of merit by the Court of Cassation on 30 October 2008.

12. On 3 November 2008 the Kentron and Nork-Marash District Court of Yerevan, on the basis of an investigator's motion, decided to prolong the applicant's detention for two months, namely till 7 January 2009, finding that the grounds for the applicant's detention on remand persisted.

13. On 8 November 2008 the applicant lodged an appeal against this decision on the same grounds as those mentioned in his previous appeal.

14. On 24 November 2008 the Criminal Court of Appeal dismissed the applicant's appeal on the same grounds.

15. The applicant lodged an appeal on points of law, which was declared inadmissible for lack of merit by the Court of Cassation on 22 January 2009.

3. The applicant's detention following referral of his case to trial court

16. In the meantime, the investigation of the applicant's case was concluded and on 30 December 2008 the case file was referred to the Northern Criminal Court for trial.

17. On 7 January 2009 the applicant's detention, as authorised by the decision of the Kentron and Nork-Marash District Court of Yerevan of 3 November 2008, expired.

18. On 13 January 2009 the Northern Criminal Court decided to set the applicant's case down for trial. It also ruled to leave the applicant's preventive measure, namely detention, unchanged.

19. On 27 February 2009 the Northern Criminal Court transferred the applicant's case, in accordance with the new rules of competence, to the Kotayk Regional Court.

20. On 25 March 2009 the Kotayk Regional Court decided to set the case down for trial on 9 April 2009. It also ruled that there was no need to change the preventive measure imposed on the applicant.

21. At the hearing of 7 May 2009 the applicant lodged a motion with the Kotayk Regional Court seeking to be released. In particular, he claimed that his detention since 7 January 2009 was unlawful as it was not based on a court decision, while the court decisions of 13 January and 25 March 2009 leaving his preventive measure, namely detention, unchanged, were unlawful as they contained no reasons for the necessity of his detention and could not serve as a basis for his continued detention.

22. On 12 May 2009 the Kotayk Regional Court dismissed the applicant's motion. Firstly, it found that the applicant, by lodging the motion, in essence sought to be released. Secondly, it found that the applicant's detention was not contrary to Article 5 § 1 of the Convention since, in accordance with Armenian law, the calculation of the detention period was suspended following the referral of a criminal case to trial. It also referred to the fact that the applicant could at any stage of the trial lodge a motion seeking to review the lawfulness and reasonableness of his detention. Therefore the fact that the impugned detention decisions were not reasoned did not violate the requirements of Article 5 of the Convention.

23. On 18 May 2009 the applicant lodged an appeal.

24. On 1 June 2009 the Criminal Court of Appeal decided to leave the applicant's appeal unexamined on the ground that the court decisions leaving a preventive measure unchanged were not subject to appeal under the Armenian law.

25. The applicant lodged an appeal on points of law claiming that the Court of Appeal's decision violated, *inter alia*, Article 5 § 4 of the Convention because he was deprived of a possibility to contest the lawfulness of his detention.

26. On 18 July 2009 the Court of Cassation declared the applicant's appeal inadmissible for lack of merit.

B. Relevant domestic law

Criminal Code of Armenia

27. Article 311 §§ 3(2) provides that bribe-taking, if carried out by a group of people upon a preliminary agreement, shall be punishable by 4 to 10 years' imprisonment with or without confiscation of property. Its paragraph 4(2) stipulates that the same act, if carried out on a particularly large scale, shall be punishable by 7 to 12 years' imprisonment with or without confiscation of property.

28. According to Article 268 § 2(2) of the Criminal Code, illegal possession of psychotropic substances without the purpose of dealing, if

such act has been carried out on a large scale, shall be punishable by up to three years' imprisonment.

COMPLAINTS

29. The applicant complains under Article 5 § 1 of the Convention that his detention starting from 7 January 2009 was not based on a court decision, while the court decision of 13 January 2009 could not be considered as lawful as it contained no reasons and did not set up a time-limit for his detention.

30. The applicant complains under Article 5 § 3 that the domestic courts did not provide proper reasons to justify his pre-trial detention and that his detention was based on a reasonable suspicion.

31. The applicant complains under Article 5 § 4 of the Convention that:

(a) his arguments concerning a lack of reasonable suspicion and the absence of proper reasons justifying his detention on remand were not properly addressed by the Court of Appeal and the Court of Cassation;

(b) the equality of arms was violated since the domestic courts, when deciding to prolong his detention on remand, relied on the materials of the criminal case which were not submitted during the court hearings and which he could not, therefore, consult;

(c) he was unable to take proceedings to contest the lawfulness of his detention since his appeal against the court decisions of 13 January and 25 March 2009 was left unexamined as not subject to appeal; and

(d) a two-month detention period ordered by a court, without a possibility to initiate a review of the lawfulness of his detention in the meantime, cannot be considered as a "reasonable interval".

THE LAW

A. The alleged unlawfulness of the applicant's detention from 7 to 13 January 2009

32. The applicant complains that there was no court decision authorising his detention from 7 to 13 January 2009. He invokes Article 5 § 1 of the Convention, which, in so far as relevant, provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so".

33. The Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of this complaint to the respondent Government.

B. The alleged lack of relevant and sufficient reasons for the applicant's detention

34. The applicant complains that his detention was not based on relevant and sufficient reasons. He refers to Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

35. The Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of this complaint to the respondent Government.

C. The alleged impossibility to take proceedings to contest the lawfulness of the applicant's detention

36. The applicant complains that he was unable to take court proceedings to contest the lawfulness of his detention, in breach of Article 5 § 4 of the Convention which provides as follows:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful".

37. The Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of this complaint to the respondent Government.

D. Other alleged violations of the Convention

38. The applicant also raises a number of other complaints under Article 5 §§ 1, 3 and 4 of the Convention.

39. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the alleged unlawfulness of his detention from 7 to 13 January 2009, the alleged lack of relevant and sufficient reasons for his detention and the alleged impossibility to take proceedings to contest the lawfulness of his detention;

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President