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

FOURTH SECTION

DECISION

Application no. 38374/20
Arsen MKRTCHYAN
against Armenia

The European Court of Human Rights (Fourth Section), sitting on 6 September 2022 as a Committee composed of:

Jolien Schukking, *President,*
Armen Harutyunyan,
Ana Maria Guerra Martins, *Judges,*

and Ilse Freiwirth, Deputy Section Registrar,

Having regard to:

the application (no. 38374/20) 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 20 August 2020 by an Armenian national, Mr Arsen Mkrtchyan, who was born in 1977 and was detained in Yerevan ("the applicant"). He was represented by Mr A. Ghazaryan, Mr H. Sargsyan and Ms V. Elbakyan, lawyers practising in Yerevan;

the decision to give notice of the complaints under Article 3 of the Convention concerning the alleged incompatibility of the applicant's state of health with his detention, the alleged lack of adequate medical care while in detention and the deterioration of the applicant's state of health because of the alleged lack of inadequate medical care in detention to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare inadmissible the remainder of the application;

the decision of 21 September 2020 to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaints under Article 3 of the Convention about the alleged incompatibility of detention with his state of health and the alleged failure of the domestic authorities to provide him with adequate medical treatment while in detention.

2. The applicant suffers from a number of serious illnesses, including, among other things, sepsis, subacute bacterial endocarditis, tricuspid valve regurgitation, hypertrophic cardiomyopathy, pulmonary hypertension, cardiac syncope (fainting), coronary artery disease and hypertension, pedal oedema (foot and ankle swelling) and respiratory failure.

3. In 2017 the applicant qualified for permanent disability benefit owing to his overall poor state of health. According to the medical evidence provided by the applicant, prior to his detention he had been hospitalised several times between April 2017 and February 2020 in relation to various severe conditions, including swelling in the legs and redness and wounds on the surface of the thighs.

I. THE FACTS SUBMITTED BY THE APPLICANT UPON INTRODUCTION OF THE APPLICATION

4. On 21 May 2020 the applicant was arrested and charged with creation or management of criminal organisations.

5. On 22 May 2020 the Yerevan Court of General Jurisdiction ("the Yerevan Court") authorised the applicant's detention for a period of two months. On the same date the applicant was admitted to Yerevan-Kentron detention facility.

6. On 4 June 2020, owing to the deterioration of his state of health, the applicant was admitted to the Central Prison Hospital.

7. By decision of 20 July 2020 the Yerevan Court extended the applicant's detention by two months until 21 September 2020.

II. THE FACTS SUBMITTED BY THE GOVERNMENT AFTER COMMUNICATION OF THE APPLICATION

8. The applicant was admitted to civilian hospitals for medical examinations and in-patient treatment on several occasions between June 2020 and September 2020.

9. On 9 September 2020 the bill of indictment was finalised and the case was sent to the Yerevan Court for examination on the merits.

10. By decision of 17 September 2020 the Yerevan Court left the applicant's detention unchanged.

11. Upon the applicant's appeal, by its decision of 16 October 2020 the Criminal Court of Appeal released the applicant on bail referring, *inter alia*, to his poor state of health.

12. On 7 December 2020 an inter-agency medical commission of experts concluded that the applicant suffered from diseases which were included in the list of medical conditions exonerating from detention.

THE COURT'S ASSESSMENT

13. On 20 August 2020, the date when the present application was lodged, the applicant requested priority treatment of his case under Rule 41 of the Rules of Court on the grounds that he was deprived of adequate medical care in detention which was resulting in his already serious medical condition aggravating even further. By decision of 21 September 2020 the Court granted the applicant's request.

14. The applicant subsequently failed to inform the Court that he had been released from detention by the decision of the Criminal Court of Appeal of 16 October 2020 (see paragraph 11 above).

15. The Government argued that the applicant's failure to inform the Court of those developments amounted to an abuse of the right of individual petition, within the meaning of Article 35 § 3 of the Convention.

16. The applicant submitted that he had no intention to mislead the Court. He argued that he still had an opportunity to disclose the information at issue during the communication phase, noted that the findings of the Court of Appeal had been in his benefit and explained the failure to inform the Court of the developments in question also by the fact that Armenia was at war at that time.

17. The concept of "abuse", within the meaning of Article 35 § 3 of the Convention, must be understood as any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and that impedes the proper functioning of the Court or the proper conduct of the proceedings before it (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 65, 15 September 2009). An application may be rejected as an abuse of the right of individual petition if it has been established that it was knowingly based on untrue facts or if the applicant submitted incomplete or misleading information, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references). Similarly, an application may be rejected as an abuse of the right of application if applicants – despite their obligation under Rule 47 § 7 (former Rule 47 § 6) of the Rules of Court – fail to inform the Court of important new developments regarding their pending applications, thereby preventing it from ruling on the matter in full knowledge of the facts (see *Bekauri*

v. Georgia, (dec.) no. 14102/02, §§ 21 and 23, 10 April 2012). However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross*, cited above, § 28).

18. In addition, the Court's task is not to deal with manifestly improper conduct on the part of applicants or their authorised representatives which creates unnecessary work for the Court, that is incompatible with its proper functions under the Convention (see *Petrović v. Serbia* (dec.), no. 56551/11 and 10 other applications, 18 October 2011; *Bekauri*, cited above, § 21; and *De Cristofaro and Others v. Italy* (dec.), no. 30464/07 and others, § 45, 10 July 2012).

19. The applicant was released from detention on 16 October 2020 (see paragraph 11 above), that is in less than a month after the Court granted priority treatment to the present application under Rule 41 of the Rules of Court (see paragraph 13 above), but he failed to inform the Court of that important development. As a result, on 1 April 2021 the Court communicated the case to the respondent Government without delay, but being based on incorrect facts, not having been informed that the grounds for granting the case priority treatment no longer persisted since the applicant had been released from detention, *inter alia*, on health grounds (see, for example, *Posokhin v. Russia* [CTE] (dec.), no. 55781/17, § 14, 10 November 2021).

20. The applicant still failed to inform the Court of his release even after communication of the case. This information, that relates to the very core of his application, reached the Court only upon receipt of the Government's observations on the admissibility and merits of the application on 1 July 2021. In these circumstances, the Court cannot accept the argument put forward by the applicant to the effect that he could have informed the Court of the development in question after communication (see paragraph 16 above). Neither can the Court accept the argument that Armenia was at war at the relevant time (ibid.) in a situation where it was never suggested that the applicant was directly involved or was in any way personally affected by the war. The Court considers that, given its case-load, a failure to inform it promptly about the change of a circumstance that was decisive for granting priority to an application impedes its proper functioning.

21. Against this background, the Court finds sufficient elements to establish that the applicant, by his failure to comply with his duty under Rule 47 § 7 of the Rules of the Court, intentionally prevented the Court form having a full knowledge of the facts of the case which were the very core of the subject matter of the present application (see *Gevorgyan and Others v. Armenia* (dec.), no. 66535/10, §§ 36 and 37, 14 January 2020).

22. Regard being had to the above, the Court considers that the applicant's conduct in the present case was contrary to the purpose of the right of individual petition as provided for in Article 34 of the Convention and that the application must therefore be rejected as an abuse thereof, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Ilse Freiwirth Deputy Registrar	Jolien Schukking President