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

THIRD SECTION

DECISION

Application no. 68571/11
Vahan KHANZADYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 11 March 2014 as a committee composed of:

Kristina Pardalos, *President*,
Alvina Gyulumyan,
Johannes Silvis, *judges*,
and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 October 2011,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vahan Khanzadyan, is an Armenian national who was born in 1978 and lives in Yerevan. He is represented before the Court by Ms L. Sahakyan and Mr E. Varosyan, lawyers 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.

3. At the relevant time the applicant was senior investigator at the General Investigative Department of the Police.

On 25 March 2011 criminal proceedings were instituted against him and other two high-level police officers for abuse of power.

4. It appears that from 2 April to 11 April 2011 the applicant was summoned and questioned as a witness more than six times.

5. On 11 April 2011 the applicant was charged with the same crime. According to the indictment, the applicant, who was in charge of an

investigation into an attempted murder, had misused his power with the aim of concealing the identity of the real perpetrators of the crime.

6. On the same date the investigator filed a motion with the Kentron and Nork-Marash District Court of Yerevan seeking to have the applicant detained for a period of two months. The motion stated that the identity of all perpetrators of the attempted murder had not yet been revealed, that the applicant was charged with a crime punishable by two to six years' imprisonment and that, taking into account the nature and dangerousness of the offence, the applicant might obstruct the investigation by exerting unlawful pressure on the participants in the proceedings and commit a new offence if he remained at large.

7. On the same date the District Court examined and granted the investigator's motion, ordering the applicant's detention for a period of two months, namely until 11 June 2011. It found that the motion was substantiated, since the identity of all perpetrators of the attempted murder had not yet been revealed, and the case materials provided sufficient grounds for believing that the applicant might abscond and obstruct the investigation, having regard to the nature and degree of dangerousness of the offence in question.

8. On 16 April 2011 the applicant lodged an appeal seeking to cancel the detention order and claiming that the investigating authority had not obtained any materials or evidence to substantiate the reasons for which it had sought to detain him. He further claimed that he had fully assisted the investigation by appearing whenever so requested by the investigating authority and being questioned as a witness more than six times.

9. On 22 April 2011 the Criminal Court of Appeal dismissed the appeal, finding that the applicant's detention was based on a reasonable suspicion, and found the grounds invoked by the Regional Court in justification of detention to be sufficient.

10. On 18 May 2011 the applicant lodged an appeal on points of law.

On 22 June 2011 the Court of Cassation declared the applicant's appeal inadmissible for lack of merit.

11. On 1 June 2011 the investigator filed a motion seeking to have the applicant's detention extended by two months. This motion stated that it was still necessary to carry out a number of investigative activities to ensure the impartiality and thoroughness of the investigation whereas the applicant's detention was to expire on 11 June 2011. It further stated that taking into account the dangerousness of the imputed offence, the reasons for keeping the applicant in detention still persisted, and that the materials of the case provided sufficient reasons to believe that, if he remained at large, he would obstruct the investigation and commit a new offence.

12. On 6 June 2011 the District Court examined the investigator's motion.

13. At the hearing the applicant and his counsel objected to the investigator's motion and requested the District Court to release the applicant on bail.

14. The District Court granted the investigator's motion. It found that although the investigating authorities had acted with due diligence, it was still necessary to extend the detention in order to complete the investigation. It also stated that there was no danger that, if at large, the applicant would abscond or commit a new offence, but that the case materials provided sufficient grounds for believing that he might obstruct the investigation. The District Court relied on the fact that the applicant was charged with falsification of testimonies and concealment of an alleged perpetrator of the crime in the criminal case of which he had been in charge. Turning to the application for bail, the District Court stated that the preventive measure imposed on the applicant, namely detention, could not be replaced by bail for the same reasons which had justified his detention.

15. On 11 June 2011 the applicant lodged an appeal arguing, inter alia, that the Regional Court had failed to state any concrete reasons suggesting that, if he remained at large, he would obstruct the investigation. Relying on Article 143 of the Code of Criminal Procedure, the applicant argued that the refusal to release him on bail was not based on any of the grounds set out in this Article. In particular, his identity was known, he had a permanent place of residence and had never tried to abscond.

16. On 22 June 2011 the Court of Appeal upheld the decision to extend the applicant's detention. The Court of Appeal stated that the facts contained in the materials of the case and presented within the framework of the appeal proceedings were sufficient to conclude that there was a reasonable suspicion of the applicant having committed the offence of which he was accused and that, if he remained at large, he would obstruct the investigation. The Court of Appeal reiterated the reasons put forward by the District Court. Regarding bail, the Court of Appeal stated that Article 143 could not be interpreted as providing an exhaustive list of grounds for refusal of bail and that the District Court had justified the refusal by the need to keep the applicant in detention.

17. The applicant lodged an appeal on points of law.

18. On 22 August 2011 the Court of Cassation declared the appeal inadmissible for lack of merit.

19. On 29 July 2011 the investigator filed a motion seeking to have the applicant's detention extended by two months. This motion stated that it was still necessary to carry out a number of investigative activities to reveal the identity of the perpetrators of the attempted murder.

20. At the hearing the applicant and his counsel objected to the investigator's motion and requested the District Court to release the applicant on bail.

21. On 4 August 2011 the District Court granted the investigator's motion. It found that although the investigating authorities had acted with due diligence, it was still necessary to extend the detention in order to carry out a number of investigative actions. It also stated that the case materials provided sufficient grounds to believe that the applicant might obstruct the investigation. Turning to the application for bail, the District Court stated that the preventive measure imposed on the applicant, namely detention, could not be replaced by bail for the reasons justifying his detention and taking into account the "personality of the applicant".

22. On 9 August 2011 the applicant lodged an appeal in which he made submissions similar to those made in his previous appeals.

23. The District Court's decision was upheld by the Court of Appeal on 24 August 2011.

24. On 21 October 2011 the Court of Cassation once again decided to leave the applicant's appeal on points of law lodged against the Court of Appeal's decision of 24 August 2011 unexamined, apparently for the same reasons as before.

25. On 4 October and 5 December 2011 the Kentron and Nork-Marash District Court, upon application by the investigator, extended the applicant's detention on two further occasions on the same ground as before.

26. These decisions were upheld by the Court of Appeal on 19 October and 22 December 2011 respectively.

27. On 26 January 2012 the investigation into the applicant's case was concluded and the case was transferred to the District Court for trial.

28. It appears that during the trial the applicant admitted his guilt and requested expedited proceedings.

29. On 23 March 2012 the District Court found the applicant guilty as charged, imposing a sentence of two and a half years' imprisonment.

B. Relevant domestic law

The Code of Criminal Procedure (in force from 12 January 1999)

30. According to Article 132, the arrested person must be released upon the decision of the authority dealing with the case if (1) the suspicion of having committed an offence has not been confirmed; (2) there is no need to keep the person in custody; or (3) the maximum time-limit for an arrest prescribed by this Code has expired and the court has not adopted a decision to detain the accused.

31. Article 136 § 2 provides that detention and bail may be imposed only by a court decision upon the investigator's or the prosecutor's motion or of the court's own motion during the court examination of the criminal case.

32. According to Article 135 § 1, the court, the prosecutor, the investigator or the body of inquiry can impose a preventive measure only when the materials obtained in the criminal case provide sufficient grounds to believe that the suspect or the accused may: (1) abscond from the authority dealing with the case; (2) hinder the examination of the case during the pre-trial or court proceedings by exerting unlawful influence on persons involved in the criminal proceedings, by concealing or falsifying materials significant for the case, by failing to appear upon the summons of the authority dealing with the case without valid reasons or by other means; (3) commit an act prohibited by criminal law; (4) avoid criminal liability and serving the imposed sentence; and (5) hinder the execution of the judgment.

COMPLAINTS

33. The applicant complains under Article 5 § 3 of the Convention that the courts, when ordering and extending his detention, failed to adopt reasoned decisions, which resulted in his unjustified and lengthy detention.

34. The applicant also 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 extend 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) the two-month detention period ordered in his respect was in violation of the requirement of a reasonable interval for review of lawfulness of detention, given his impossibility under the law to institute separate proceedings seeking the review of the lawfulness of his detention within the prescribed two months.

THE LAW

A. Complaint under Article 5 § 3 of the Convention

35. The applicant complains that the courts, when ordering and extending his detention, failed to adopt reasoned decisions, which resulted

in his unjustified and lengthy detention. He referred to Article 5 § 3 of the Convention, which reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

36. The applicant's pre-trial detention lasted from 11 April 2011, when the District Court ordered the applicant's initial detention, until 23 March 2012, when the applicant was convicted by the District Court. The period to be taken into consideration therefore lasted about eleven months and twelve days.

37. Assessing the grounds for the applicant's continued detention, the Court notes that the competent judicial authorities advanced three principal reasons for not granting the applicant's release, namely that he remained under suspicion of having committed the crime of which he was accused, the serious nature of the offences in question and the fact that the applicant would be likely to pervert the course of justice and influence witnesses if released, given the sentence which he faced if found guilty as charged, his previous connections and the fact that the he was charged with falsification of testimonies and concealment of an alleged perpetrator of the crime in the criminal case of which he had been in charge.

38. The Court accepts that the reasonable suspicion of the applicant having committed the offence with which he had been charged, being based on cogent evidence, persisted throughout the trial leading to his conviction.

39. The Court reiterates that one of the main grounds invoked by the domestic courts in their justification for the applicant's detention was the likelihood of his perverting the course of justice. There was a risk that, if released, he would continue his attempts to interfere with the proceedings in view of the fact of his previous employment with the police and that he was charged with a crime closely linked to his previous professional activity committed in complicity with other high ranking police officers. Therefore, the domestic courts could justifiably consider it necessary to keep the applicant in custody (compare with *Yudayev v. Russia*, no. 40258/03, § 70, 15 January). The Court is also mindful of the courts' findings about the applicant's possibility to influence witnesses. The Court accepts that, in the special circumstances of the case, there was a risk stemming from the applicant's and other co-accused's previous positions and the ties they had in the police. In order to demonstrate that a substantial risk of collusion existed and continued to exist, the District Court further referred to the scope of the case and the necessity to perform a number of procedural steps with which the applicant could have interfered, if released. The Court observes that the domestic courts carefully balanced the interests of justice against the applicant's right to liberty.

40. Thus, on the basis of the information in their possession at the time when the detention orders were issued, the domestic courts could have reasonably considered that the danger posed by the applicant to the proper administration of justice was real and that it warranted his detention.

41. Having regard to the above, the Court considers that the present case is different from many previous Armenian cases where a violation of Article 5 § 3 was found because the domestic courts had extended an applicant's detention relying essentially on the gravity of the charges without addressing specific facts or considering alternative preventive measures (see among others *Piruzyan v. Armenia*, no. 33376/07, §§ 97 et seq., ECHR 2012 (extracts); *Sefilyan v. Armenia*, no. 22491/08, §§ 88 et seq., 2 October 2012; *Malkhasyan v. Armenia*, no. 6729/07, §§ 74 et seq., 26 June 2012).

42. The Court lastly observes that the applicant's case was of a certain complexity, involving a difficult task of determining the facts and the degree of alleged responsibility of each of the defendants, and an examination of forensic evidence. The investigation was completed within approximately nine and a half months. There is no evidence of any significant periods of inactivity on the part of the prosecution authorities.

43. Having regard to the foregoing, the Court finds that the applicant's complaint under Article 5 § 3 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with paragraph 4 of this provision.

B. Remainder of the application

44. The applicant also alleged violations of his rights under Article 5 § 4 of the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are 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 is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli
Deputy Registrar

Kristina Pardalos
President