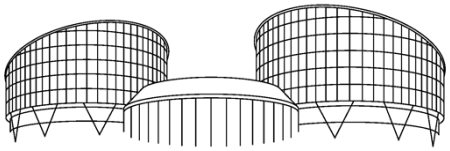

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VOSKERCHYAN v. ARMENIA

(Application no. 28739/09)

JUDGMENT

STRASBOURG

18 October 2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Voskerchyan v. Armenia,

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

Kristina Pardalos, *President,*
Ksenija Turković,
Tim Eicke, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 25 September 2018,

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

PROCEDURE

1. The case originated in an application (no. 28739/09) 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") by an Armenian national, Mr Grigor Voskerchyan ("the applicant"), on 17 September 2009.

2. The applicant was represented by Mr M. Shushanyan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. On 20 February 2013 the complaint about the alleged failure of the domestic courts to provide relevant and sufficient reasons for the applicant's detention was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Yerevan.

5. On 19 February 2008 a presidential election was held in Armenia, which was followed by daily protest rallies held at Yerevan's Freedom Square from 20 February onwards by the supporters of the main opposition candidate, Mr Ter-Petrosyan. The applicant was the head of Mr Ter-Petrosyan's election headquarters in the town of Abovyan and regularly attended the rallies. On 1 March 2008 the assembly at Freedom Square was dispersed by the police, causing mass protests throughout Yerevan.

6. On 8 March 2008 the applicant was summoned to a local police station in Abovyan where he was questioned about the leaflets that he had prepared and distributed among the demonstrators during the rallies.

7. On 11 March 2008 the applicant was charged with organising mass disorder and an attempt to usurp State power.

8. On the same date the Kentron and Nork-Marash District Court of Yerevan (the District Court) ordered the applicant's pre-trial detention for a period of two months, namely until 8 May 2008, taking into account the nature and the gravity of the imputed offence and the severity of the punishment prescribed for it. By the same decision the District Court refused the applicant's request to be released on bail.

9. On 14 March 2008 the applicant lodged an appeal, arguing that the investigating authority had not presented any evidence to substantiate the need for his detention.

10. On 21 March 2008 the Criminal Court of Appeal decided to dismiss the applicant's appeal, holding that the fact that the applicant had been accused of a grave offence punishable by up to ten years' imprisonment increased the probability of his evading criminal punishment. Furthermore, it was unacceptable to release the applicant on bail in view of the fact that, if at large, the applicant could abscond, obstruct the proceedings, commit another offence, evade responsibility and punishment, and continue to breach public order. As to the applicant's good character, mentioned by him in his appeal, this was not sufficient to justify lifting the detention order.

11. On 4 May, 2 July, 3 September and 30 October 2008 the District Court extended the applicant's detention on the same grounds, on each occasion by two months.

12. On 19 May, 18 July, 19 September and 16 November 2008 the Criminal Court of Appeal dismissed the applicant's appeals against those decisions.

13. On 10 December 2008 the trial court decided to set the case down for trial, ruling in the same decision that the applicant's detention was to remain unchanged.

14. On 22 June 2009 the District Court found the applicant guilty of making public calls inciting a violent overthrow of the government, and imposed a two-year sentence. It further decided to absolve the applicant from serving his sentence under a general amnesty declared by the Armenian parliament on 19 June 2009. The applicant was immediately released from detention.

II. RELEVANT DOMESTIC LAW

15. For a summary of the relevant domestic provisions see the judgment in the case of *Ara Harutyunyan v. Armenia* (no. 629/11, §§ 30-32, 20 October 2016).

THE LAW

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

16. The applicant complained that the domestic courts had failed to provide relevant and sufficient reasons for his detention. He relied on Article 5 § 3 of the Convention which, in so far as relevant, reads as follows:

> "3. 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."

A. Admissibility

17. The Government submitted that the applicant had failed to exhaust the domestic remedies, because he had not lodged appeals on points of law against the decisions of the lower courts, a right which he enjoyed under Article 403 of the CCP.

18. The applicant did not comment on the Government's claim.

19. The Court notes that it has already examined and dismissed a similar objection in another case against Armenia (see *Arzumanyan v. Armenia*, no. 25935/08, §§ 28-32, 11 January 2018). It sees no reason in the present case to depart from its earlier findings. It therefore dismisses the Government's objection of non-exhaustion.

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

B. Merits

21. The applicant submitted that the courts had failed to provide relevant and sufficient reasons for his detention.

22. The Government argued that the courts had provided relevant and sufficient reasons for the applicant's detention, such as the nature and the gravity of the imputed offence and the risk of absconding and obstructing the investigation.

23. The Court refers to its general principles under Article 5 § 3 of the Convention relating to the right to be released pending trial (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 92-102, ECHR 2016 (extracts), and *Ara Harutyunyan*, cited above, §§ 48-53) and notes that it has already found the use of stereotyped formulae when imposing and extending detention to be a recurring problem in Armenia (see, among other

authorities, *Piruzyan v. Armenia*, no. 33376/07, §§ 97-100, 26 June 2012; *Malkhasyan v. Armenia*, no. 6729/07, §§ 74-77, 26 June 2012; *Sefilyan v. Armenia*, no. 22491/08, §§ 88-93, 2 October 2012; and *Ara Harutyunyan*, cited above, §§54-59). In the present case, the domestic courts similarly justified the applicant's continued detention with a mere citation of the relevant domestic legal principles and a reference to the gravity of the offence without addressing the specific facts of his case or providing any details as to why the risks of absconding, obstructing justice or reoffending were justified. The Court therefore concludes that the domestic courts failed to provide relevant and sufficient reasons for the applicant's detention.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. Lastly, the applicant raised a number of other complaints under Article 3, Article 5 §§ 1 (c) and 4, Article 10 and Article 11 of the Convention.

26. 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. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

28. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government submitted that the applicant had failed to provide any evidence that he had suffered non-pecuniary damage and requested the Court to reject his claim. In any event, the amount claimed was excessive.

30. The Court considers that the applicant has undoubtedly sustained non-pecuniary damage on account of the breach of the Convention found and awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant did not claim any costs and expenses.

C. Default interest

32. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 3 of the Convention concerning the alleged failure of the domestic courts to provide relevant and sufficient reasons for the applicant's detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Kristina Pardalos
Deputy Registrar	President