



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

THIRD SECTION

**CASE OF SAHAKYAN v. ARMENIA**

*(Application no. 66256/11)*

JUDGMENT

STRASBOURG

10 November 2015

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Sahakyan v. Armenia,**

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

Luis López Guerra, *President*,

Johannes Silvis,

Valeriu Grițco,

Branko Lubarda,

Carlo Ranzoni,

Mārtiņš Mits,

Armen Harutyunyan, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 20 October 2015,

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

## PROCEDURE

1. The case originated in an application (no. 66256/11) 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 Hayk Sahakyan (“the applicant”), on 14 October 2011.

2. The applicant was represented by Mr Y. Khachatryan, a lawyer practising in Yerevan. The Armenian Government (“the Government”) were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been denied compensation for non-pecuniary damage suffered as a result of unlawful detention and that Armenian law did not provide for an enforceable right to compensation of a non-pecuniary nature.

4. On 11 September 2013 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Yerevan.

6. On 30 August 2007 the applicant was arrested and later charged under Article 112 § 1 of the Criminal Code with intentional infliction of a grave injury.

7. On 1 September 2007 the Erebuni and Nubarashen District Court of Yerevan granted the investigator's motion to place the applicant in pre-trial detention.

8. On 28 September 2007 the same court decided, upon the applicant's motion, to release him on bail.

9. On 4 October 2007 the investigator decided to cancel bail and to detain the applicant on the basis of the decision of 1 September 2007. It appears that on the same day the applicant was placed in pre-trial detention.

10. On 22 October 2007 the Erebuni and Nubarashen District Court of Yerevan decided, upon the applicant's appeal, to quash the investigator's decision and to release the applicant. The District Court stated that, in accordance with Article 136 of the Code of Criminal Procedure, detention could be imposed only by a court and was the court's prerogative. The investigator had therefore exceeded his authority and had incorrectly interpreted the law by imposing detention. The law required the investigator to apply to the court with a reasoned motion, if there were sufficient grounds to replace bail with detention. The District Court found that the applicant's detention imposed on the basis of the decision of 4 October 2007 had violated his rights guaranteed under, *inter alia*, Article 5 §§ 3 and 4 of the Convention and Article 16 of the Constitution.

11. On 13 December 2007 the Erebuni and Nubarashen District Court of Yerevan acquitted the applicant.

12. On 28 March 2008 the Criminal Court of Appeal upheld this judgment.

13. On 21 April 2009 the applicant instituted civil proceedings against the Ministry of Finance, seeking pecuniary and non-pecuniary damage in connection with the criminal proceedings against him, including his detention. The claim for pecuniary damage included alleged lost earnings, expenses related to food parcels received in detention and the transport costs of his relatives. The applicant estimated the non-pecuniary damage suffered by him at 15,400 euros (EUR).

14. On 25 September 2009 the Kentron and Nork-Marash District Court of Yerevan decided to grant partially the applicant's claim for pecuniary damages and award him 215,100 Armenian drams (AMD) (approximately EUR 380 at the material time). As regards the claim for non-pecuniary damages, the District Court decided to dismiss it, with reference to Article 17 of the Civil Code, on the ground that the Armenian law did not provide for this type of compensation.

15. On 26 October 2009 the applicant lodged an appeal.

16. On an unspecified date the Ministry of Finance also lodged an appeal, contesting the judgment in its part concerning the award of pecuniary damages.

17. On 4 December 2009 the Civil Court of Appeal decided to dismiss the applicant's appeal and to grant that of the Ministry of Finance, reducing

the amount of compensation for pecuniary damage to AMD 96,800 (approximately EUR 165 at the material time). As regards the claim for non-pecuniary damages, the Court of Appeal decided to terminate the proceedings on the ground that Armenian law did not provide for this type of compensation and therefore that claim could not be examined by the court.

18. On 14 December 2009 the applicant lodged an appeal on points of law.

19. On 1 July 2011 the Court of Cassation decided to dismiss the appeal and to uphold the decision of the Civil Court of Appeal.

## II. RELEVANT DOMESTIC LAW

### A. The Constitution

20. Article 16 provides that everyone has the right to liberty and security of person.

### B. The Civil Code

21. Article 17 provides that a person whose rights have been violated may claim full compensation for the damage suffered, unless the law or a contract envisages a lower amount of compensation. Damages are the expenses borne or to be borne by the person, whose rights have been violated, in connection with restoring the violated rights, loss of his property or damage to it (material damage), including lost earnings which the person would have gained in normal conditions of civil life, had his rights not been violated (lost income).

22. Article 1064 provides that damage caused as a result of unlawful conviction, unlawful criminal prosecution, unlawful imposition of a preventive measure in the form of detention or a written undertaking not to leave, and unlawful imposition of an administrative penalty shall be compensated in full, in a procedure prescribed by law, by the Republic of Armenia, regardless of the fault of the officials of the body of inquiry, the investigating authority, the prosecutor's office or the courts.

### C. The Code of Criminal Procedure

23. Article 66 provides that an acquitted person is entitled to claim full compensation as a result of unlawful arrest, detention, indictment and conviction, taking into account the possible lost profits.

24. Article 136 provides that detention is 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 case.

## THE LAW

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

25. The applicant complained that he had been denied compensation for non-pecuniary damage suffered as a result of unlawful detention. He relied on Article 5 § 5 of the Convention, which reads as follows:

“5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

#### A. Admissibility

26. 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

##### 1. *The parties' submissions*

27. The applicant submitted that the dismissal of his claim for non-pecuniary damages had violated the guarantees of Article 5 § 5 of the Convention.

28. The Government submitted that the domestic courts, in dismissing the applicant's claim for non-pecuniary damages, acted in accordance with the domestic law which did not envisage this type of compensation. There has therefore been no violation of Article 5 § 5 of the Convention.

##### 2. *The Court's assessment*

29. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions (see, among other authorities, *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X). Furthermore, Article 5 § 5 should not be construed as affording a right to compensation of

purely pecuniary nature, but should also afford such right for any distress, anxiety and frustration that a person may suffer as a result of a violation of other provisions of Article 5 (see *Khachatryan and Others v. Armenia*, no. 23978/06, § 157, 27 November 2012).

30. In the present case, the applicant's detention from 4 to 22 October 2007 was found to be in breach of Article 5 §§ 3 and 4 of the Convention by a decision of the domestic court (see paragraph 10 above). Article 5 § 5 of the Convention is therefore applicable to his case. His civil claim for non-pecuniary damages, however, was rejected by the domestic courts on the ground that Armenian law did not envisage "non-pecuniary damages" as a type of compensation.

31. The Court has already found the unavailability of compensation for damages of a non-pecuniary nature under the Armenian law to be in violation of the guarantees of Article 5 § 5 of the Convention (see *Khachatryan and Others*, cited above, §§ 158-159). There are no reasons to depart from that conclusion in the present case. It follows that the applicant did not enjoy, in law or in practice, an enforceable right to compensation within the meaning of that Article.

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

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

33. The applicant alleged on the same ground a violation of Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

34. The Government contested that argument.

35. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

36. Having regard to the finding relating to Article 5 § 5 (see paragraph 32 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 of the Convention (see *Smatana v. the Czech Republic*, no. 18642/04, § 145, 27 September 2007).

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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**

38. The applicant claimed 1,221,500 AMD (approximately EUR 2,160 at the material time) and EUR 15,400 in respect of pecuniary and non-pecuniary damage respectively.

39. The Government submitted that there was no causal link between the pecuniary damages claimed and the violations alleged, while the amount of non-pecuniary damages claimed was inflated.

40. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant has suffered non-pecuniary damage, which is not compensated by the finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

#### **B. Costs and expenses**

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

#### **C. Default interest**

42. 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 application admissible;
2. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;



4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Luis López Guerra  
President