



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

THIRD SECTION

DECISION

Application no. 44769/08
by Vartgez GASPARI
against Armenia

The European Court of Human Rights (Third Section), sitting on 22 November 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 10 September 2008,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vartgez Gaspari, is an Armenian national who was born in 1957 and lives in Yerevan. He is represented before the Court by Mr M. Shushanyan, 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.

3. The applicant is an ethnic Armenian who was born and raised in Iran and appears to have repatriated to Armenia as an adult.

1. The 19 February 2008 presidential election in Armenia and post-election demonstrations

4. On 19 February 2008 a presidential election was held in Armenia. The main contenders were the then Prime Minister, Serzh Sargsyan, and the main opposition candidate, Levon Ter-Petrosyan, who had also served as President of Armenia between 1991 and 1998.

5. The applicant acted as Levon Ter-Petrosyan's authorised election assistant at one of the election precincts.

6. It appears that immediately after the election, Levon Ter-Petrosyan announced that the election had not been free and fair. From 20 February 2008 onwards, nationwide protest rallies were held by thousands of Levon Ter-Petrosyan's supporters, the main meeting place for them being the central Freedom Square in Yerevan and the surrounding park (known as Opera Square). It appears that a few hundred of the demonstrators stayed in that area around the clock, having set up tents. It further appears that these demonstrations were held without notifying the authorities as required by law, but the authorities did not make any attempt to interfere with them. According to the applicant, he regularly attended the on-going demonstrations and sit-ins.

7. On 24 February 2008 the Central Election Commission announced that Prime Minister Sargsyan had won the election with around 52% of all votes cast, while Levon Ter-Petrosyan received around 21% of votes.

2. The events of 1 March 2008 and institution of criminal proceedings

8. On 1 March 2008, apparently at some point between 6 and 7 a.m., police forces arrived on Freedom Square. It appears that clashes took place between the police and the demonstrators who fled from the square.

9. On the same date criminal proceedings no. 62202508 were instituted under Article 225.1 §§ 1 and 2, Article 235 §§ 1 and 2 and Article 316 § 2 of the Criminal Code (CC). This decision stated:

“After the announcement of the preliminary results of the presidential election of 19 February 2008, the presidential candidate, Levon Ter-Petrosyan, members of parliament, [K.S. and S.M.], the chief editor of “Haykakan Zhamanak” daily, [N.P.], and others organised and held mass public events on Yerevan's Freedom Square in violation of the procedure prescribed by law and made calls inciting to disobey the decisions ordering an end to the events held in violation of the procedure prescribed by law, while a number of participants in the mass events illegally possessed and carried illegally obtained weapons and ammunition.

On 1 March 2008 at around 6 a.m., when the police took measures aimed at forcibly ending the public events held in violation of the procedure prescribed by law, in compliance with the requirements of Section 14 of the Assemblies, Rallies, Marches and Demonstrations Act, the organisers and participants of the events, disobeying the

lawful orders of public officials performing their duties, namely the police, inflicted violence on the latter dangerous for their life and health with pre-arranged clubs, metal rods and other adapted tools, causing [them] injuries of various gravity.”

10. It appears that later that day the violence escalated and more clashes took place between the law enforcement authorities and the demonstrators, some of whom had relocated to the area surrounding the French Embassy and the Yerevan Mayor’s Office and were joined by thousands of others. The clashes continued until late at night, resulting in ten deaths and numerous injured and a state of emergency being declared by the incumbent President Kocharyan which, *inter alia*, prohibited the holding of any further rallies and other mass public events for a period of twenty days.

3. *The criminal proceedings against the applicant*

(a) **The applicant’s arrest**

11. The applicant alleges that in the early morning of 1 March 2008, at the time of the clash at Freedom Square, he was at home. At 7.45 a.m., unaware of what was happening at Freedom Square, he left his home and headed in the direction of the square. On his way he noticed an unusually chaotic situation with people fleeing and being pursued, assaulted and arrested by the police. At 7.55 a.m. he arrived at a crossroad adjacent to Freedom Square where he was immediately arrested, placed in a police van and taken to a police station.

12. One of the arresting police officers, E.P., reported on the same day that the applicant had been arrested at 8.30 a.m. on a street adjacent to the Opera house and brought to the Arabkir Police Department for inflicting violence, threatening and resisting him and another police officer, G.H.

13. Another police officer reported that a number of persons, including the applicant, had been brought to the Arabkir Police Department on suspicion of having inflicted violence on a public official.

14. It appears that the applicant, when asked about his identity, introduced himself as Vardges Gasparyan. From 12 noon to 12.15 p.m. he was questioned as a witness but refused to testify or to provide any personal details until his lawyer was present.

15. On 2 March 2008 another set of criminal proceedings was instituted, no. 62202608, under Article 225 § 3 and Article 235 § 2 of the CC. This decision stated:

“The self-nominated presidential candidate at the presidential election of 19 February 2008, Levon Ter-Petrosyan, and his followers and supporters, members of parliament [K.S. and S.M.], the chief editor of “Haykakan Zhamanak” daily, [N.P.], and others, not willing to concede defeat at the election, with the aim of casting doubt on the election, instilling distrust towards the results among large segments of the population, creating illusions of public discontent and revolt and discrediting the election and the authorities, from 1 March 2008 in the area of the Yerevan Mayor’s Office and central streets organised mass disturbances which

involved murders, violence, pogroms, arson, destruction of property and armed resistance to public officials, effected with the use of firearms, explosives and other adapted objects.”

16. On the same date both sets of proceedings were joined and examined under no. 62202608.

17. Later that day, at 8 p.m., the investigator drew up a record of an arrest which stated that the applicant was arrested at that hour on suspicion of having committed offences prescribed by Articles 225.1 § 1 and 316 § 1 of the CC.

18. It appears that on 3 March 2008 the applicant’s wife, upon the order of the investigator, brought his passport to the police station. The applicant alleges that the investigator ordered his wife’s appearance on purpose in order to put psychological pressure on him.

19. The applicant further alleges that between 1 and 3 March 2008 he was deprived of legal assistance.

(b) The charge against the applicant and his detention

20. On 5 March 2008 the applicant was formally charged under Article 316 § 1 of the CC. This decision stated that, having participated from 20 February 2008 in unlawful public events, organised by the presidential candidate Levon Ter-Petrosyan and his co-thinkers, including mass rallies, 24-hour demonstrations, assemblies, pickets and sit-ins, which disturbed the normal life, traffic and peace and quiet of the population, on 1 March 2008 at around 8.30 a.m. in the vicinity of Freedom Square when public officials, including police officers E.P. and G.H. of the Arabkir Police Department, once again warned and ordered him to end his participation in an unlawful event, the applicant, disobeying their lawful orders, inflicted violence on police officers E.P. and G.H. not dangerous for their life and health and also made violent threats.

21. On the same date the applicant was questioned as an accused and refused to testify, alleging that the criminal proceedings against him were the result of his political affiliation and views and his support for Levon Ter-Petrosyan.

22. At 8.30 p.m. on that day the applicant was brought before the Arabkir and Kanaker-Zeytun District Court of Yerevan which examined the investigator’s motion seeking to have him detained for a period of two months on the ground that, if he remained at large, he could abscond, obstruct justice, commit another offence and evade criminal responsibility.

23. The applicant submitted before the court that the motion was unsubstantiated. He had higher education, was married, was head of a company, had a minor child dependent on him and had no previous convictions. The imputed acts fell into the category of offences of medium gravity and it was not substantiated that, if he remained at large, he would evade criminal responsibility and serving a penalty.

24. The District Court decided to grant the investigator's motion, finding that, if the applicant remained at large, he could abscond, obstruct the proceedings, commit another offence and influence witnesses.

25. On 11 March 2008 the applicant lodged an appeal, arguing that there was no evidence suggesting that, if he remained at large, he would abscond, obstruct justice, unlawfully influence witnesses, commit another offence, evade criminal responsibility or serving the imposed penalty. He was a respected and trusted person in society, was known to be of good character, had a permanent place of residence and a minor child dependent on him, and had always respected the law.

26. On 20 March 2008 the Criminal Court of Appeal dismissed the applicant's appeal. It found, firstly, that the applicant was accused of an offence, for which the prescribed penalty exceeded one year's imprisonment. Secondly, after having been brought to the police station, the applicant introduced himself under a false name, namely instead of Vartgez Gaspari he introduced himself as Vardges Gasparyan. His real name was discovered only after the examination of his passport. This provided sufficient grounds to believe that, if the applicant remained at large, he could abscond, falsify or conceal evidence and obstruct the investigation by failing to appear upon the summons of the investigating authority.

27. On an unspecified date the bill of indictment was finalised and the applicant's case was sent to court.

28. On 23 April 2008 the Kentron and Nork-Marash District Court of Yerevan decided to set the case down for trial and to keep the applicant in detention.

29. On 30 April 2008 six members of parliament filed a request with the District Court, seeking to have the applicant's detention replaced with their personal guarantee. They declared at the outset that no one in Armenia could feel secure from being detained as a result of expressing pluralist ideas. They further submitted that they personally knew the applicant and guaranteed that, if he remained at large, he would not abscond, obstruct the proceedings, commit another offence or evade his penalty, if any. The members of parliament expressed their willingness to put up bail for the applicant's release.

30. On 14 May, 17 June, 17 July and 5 August 2008 the applicant filed motions with the District Court, seeking to be released.

31. The District Court decided to dismiss the motions of 14 May and 17 June, finding that the grounds for the applicant's detention still persisted, and to adjourn the motions of 17 July and 5 August until circumstances necessary for a decision to be taken were clarified.

32. The applicant alleges that, at the hearing of 23 September 2008, he once again requested the court to release him and asked the court to reason its decision. The presiding judge refused to take a decision, stating that a decision had already been taken on 17 July whereby this question was

adjourned. It appears that an argument arose between, on one hand, the applicant and his lawyer, who insisted that the judge take a decision on the applicant's request or else withdraw from the case, and on the other hand, the judge and the prosecutor, who objected to the judge's withdrawal. The applicant then wanted to leave the courtroom in protest against the allegedly unlawful actions of the judge, following which the judge decided to impose a penalty on the applicant by removing him from the courtroom on the ground that he was hindering the normal course of the hearing, abusing his procedural rights and disrespectfully refusing to follow the judge's orders. The hearing was adjourned until 29 September 2008.

33. The applicant further alleges that, at the hearing of 29 September 2008, his lawyer once again wished to file a motion for release, but was not allowed to do so by the presiding judge. Thereafter the applicant declared that he wished to file a motion challenging the judge. In response the judge decided once again to impose a penalty on the applicant on the same ground by removing him from the courtroom and adjourning the hearing until 3 October 2008.

34. On 22 October 2008 the applicant filed another motion seeking to be released on bail. It appears that no decision was taken on this motion.

35. On 10 November 2008 the Kentron and Nork-Marash District Court of Yerevan found the applicant guilty under Article 316 § 1 of the CC and sentenced him to one year's imprisonment. The beginning of his sentence was to be calculated from 2 March 2008. The periods from 23 to 29 September and from 29 September to 3 October 2008, during which the court hearings were adjourned because of the applicant's removal from the courtroom, were not to be calculated as part of his sentence.

(c) The applicant's alleged ill-treatment and conditions of his detention

(i) The alleged questioning on the night of 1 March 2008

36. According to the applicant, from 10 p.m. on 1 March 2008 until 2 a.m. on the next day he was questioned but refused to testify. He alleges that during this period he was subjected to psychological pressure and humiliation. In particular, one of the investigators, A.K., started screaming and swearing at him, insisting that he should testify and sign papers. The investigator then tried to attack him with his fists, as if to punch him, but the others present in the room, including another investigator, stopped him, as if thereby preventing an assault. Investigator A.K. further subjected him to humiliation, calling him a "traitor", "demagogue" and "conjurer". Despite his assertion that he had no injuries, the investigator ordered him to undress in front of a group of people as if for a medical inspection of his body. No injuries were detected as a result of this inspection.

37. On 12 March 2008 the applicant complained to the General Prosecutor about all the above circumstances with the exception of the fact

that he had been ordered to undress. He requested that the unlawful behaviour of the officials in question be remedied.

38. By a letter of 14 March 2008 the applicant's complaint was forwarded by the prosecutor to the investigator dealing with criminal case no. 62202608 to be included in the case file and examined during the investigation.

39. The applicant alleges that there were no further developments in this respect.

(ii) The alleged events of 6 March 2008

40. The applicant alleges that on 6 March 2008, when he and a number of other arrestees were being transferred from the police temporary detention facility to a pre-trial detention facility, the transferring police officers started asking all the arrestees in turns whether they had been involved in burning cars or hitting a police officer on 1 March 2008. Those who did not deny their involvement in the demonstrations were slapped and beaten. In reply to the same question, he stated that it was not their business and it was up to the courts to determine. He was then subjected to a search and was ordered to remove his trousers and underwear and to do sit-ups in front of everyone, as if for the purpose of finding illegal drugs or other items.

(iii) Conditions of the applicant's detention

41. Following his transfer from the police temporary detention facility, the applicant was kept at Nubarashen detention facility. He raised the following allegations concerning his conditions of detention.

42. From 6 to 7 March 2008 he was kept in cell no. 9 which measured about 20-25 sq. m and accommodated 7 to 8 inmates. The cell was located in the detention facility's semi-basement and was very damp and unsanitary. The air was stale, while the only source of ventilation was a window measuring 1 sq. m and facing a pit which was filled with several centimetres of rubbish and was frequented by rats. In the evening the toilet situated in the corner of the cell became blocked and the sewer waste from upper floors flooded the entire cell floor. The appeals of inmates to the prison guards did not produce any results and they were allowed only to draw the flood towards the corridor. On the same date he addressed a letter to the chief of the detention facility, complaining about the unsanitary conditions in the cell and, in particular, the flooding, requesting that measures be taken.

43. On 7 March at noon he was transferred to cell no. 29 where he stayed for about 1-2 hours. The cell measured about 20-25 sq. m and accommodated about 10 inmates.

44. On the same date he declared a hunger strike in protest against human rights violations in Armenia. After having declared the hunger strike, at around 2 p.m. on that day he was transferred to cell no. 4 where he was

kept until 14 March 2008, sharing the cell with a recidivist, T.T., who was allegedly also on hunger strike. The cell measured about 20 sq. m and was situated in the detention facility's semi-basement. The conditions were allegedly unsanitary, the air was damp and it stank of sewage. The only window to the basement cell, measuring 1 sq. m, had a pit in front of it which prevented natural light from entering the cell. No out of cell activities were allowed.

45. From 14 to 20 March 2008 he was kept in cell no. 79 which measured 20 sq. m. The cell was relatively calm and ventilated.

46. From 20 March to 15 April 2008 he was kept in cell no. 20 which measured about 20 sq. m and accommodated 10 to 12 inmates. Almost everybody in the cell smoked and, being a non-smoker, he felt asphyxiated, while his eyes watered regularly. The television was switched on 24 hours a day which disrupted his sleep. On 15 April 2008 the toilet became blocked and the cell floor flooded with the sewer waste from upper floors. Following his complaint, he was transferred one floor up to cell no. 42.

47. From 15 April to 4 September 2008 he was kept in cell no. 42 which measured about 25 sq. m and at times accommodated up to 14 inmates. The cell had only eight beds so the inmates had to sleep in turns. There was a serious lack of fresh air since almost everybody in the cell smoked. The sanitary conditions were relatively satisfactory.

48. From 15 September to 23 December 2008 he was kept in cell no. 10 which measured about 12 sq. m and accommodated 3 to 4 inmates.

(iv) Further allegations concerning the applicant's stay in cell no. 4

49. The applicant alleges that during his stay in cell no. 4 between 7 and 14 March 2008 his cellmate, T.T., who was apparently a drug addict, showed hostile behaviour towards him and was constantly harassing him, seeking conflict and demanding him to leave the cell. T.T.'s behaviour was becoming increasingly aggressive and he was using various methods of psychological pressure. In particular, T.T. informed him that he was suffering from tuberculosis and then on several occasions threw the water he had used to rinse his mouth into his face and cynically laughed at him that he would also become ill and not be able ever to hug or kiss his son. He was harassing the applicant not to read or write, since this was disturbing him. The applicant's verbal complaints to the administration about T.T.'s behaviour remained unanswered.

50. The applicant further alleges that T.T.'s behaviour became particularly aggressive on the night of 11 to 12 March 2008, apparently because of his inability to satisfy his drug needs. First T.T. started yelling at him and demanding that he leave the cell. T.T. thereafter attacked him with the intention to punch him but, having failed, grabbed an extension cable that was in the cell and tried to strangle him. The applicant managed to grab the cable from T.T.'s hands and to throw it away. Thereafter T.T. took out a

15 cm long hidden home-made knife and attacked the applicant, trying to stab him in the face and belly, but met the applicant's resistance. This situation continued the entire night until the guards visited their cell at 10 a.m. for a regular check. The applicant complained to them about this incident.

51. On 12 March 2008 the applicant addressed a complaint in writing to the chief of the detention facility, with a copy to the Ombudsman, about the events of the night of 11 to 12 March.

52. The applicant alleges that between 3 and 4 p.m. the deputy chief of the detention facility visited the cell and informed him, in reply to his complaint, that "those were the conditions and there was nothing they could do". He further alleges that materials were prepared for a criminal case to be instituted but eventually the institution of criminal proceedings was rejected. No copy of this decision was provided to him.

B. Relevant domestic law

1. The Criminal Code (in force from 1 August 2003)

53. Article 69 § 3 prescribes that one day of a detention period preceding the date on which a conviction becomes final shall be equal to one day of imprisonment imposed as a penalty.

54. Article 225.1 § 1 prescribes that organising and holding a public event in violation of the procedure prescribed by law shall be punishable by a fine of between 200 and 300 times the minimum wage or detention of up to two months.

55. Article 316 § 1 prescribes that inflicting violence or threatening to inflict violence, not dangerous for life or health, on a public official or his next-of-kin, connected with the performance of his official duties, shall be punishable by a fine of between 300 and 500 times the minimum wage or detention of up to one month or imprisonment for a period not exceeding five years.

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

56. Articles 314.1 § 1 prescribes that the court may impose penalties, including removal from the courtroom, on the parties, other participants in the proceedings and persons attending the court hearing in the case of showing a disrespectful attitude towards the court, hindering the normal course of the hearing, abusing their procedural rights or unjustifiably failing to comply or properly comply with their procedural obligations. Article 314.1 § 6 prescribes that, if the accused is removed from the courtroom as a penalty, the hearing shall be adjourned for two weeks. The adjournment period shall not be calculated as part of the sentence period.

3. *The Law on Conditions for Holding Arrested and Detained Persons (in force from 1 April 2002)*

57. Section 20 prescribes that the living space afforded to arrested and detained persons must comply with the building and sanitary-hygienic norms established for general living spaces. The area of the living space afforded to arrested and detained persons shall not be less than 4 sq. m for each individual.

COMPLAINTS

58. The applicant complains under Article 5 §§ 1 (c) and 3 of the Convention that

(a) his arrest from 8.30 a.m. on 1 March 2008 until 8 p.m. on 2 March 2008 was unlawful and unrecorded;

(b) he was kept under arrest beyond 8.30 a.m. on 4 March 2008, that is more than the 72 hours allowed, and was brought before a judge only at 8.30 p.m. on 5 March 2008 in violation of the requirement to be brought promptly before a judge; and

(c) no reasons for his arrest were explained to him until 8 p.m. on 2 March 2008.

59. The applicant complains under Article 5 § 1 (c) of the Convention that his arrest and detention were not based on a reasonable suspicion.

60. The applicant complains under Article 5 § 3 of the Convention that there were no grounds for detaining him, the courts failed to provide relevant and sufficient reasons and bail was refused.

61. The applicant complains under Article 5 § 1 of the Convention that his detention between 23 September and 3 October 2008, which was not counted as a part of his prison sentence, was not effected on any of the grounds prescribed by that Article and was based on a legal provision, namely Article 314.1 of the Code of Criminal Procedure, which lacked legal certainty and was unforeseeable.

62. The applicant complains under Article 11 of the Convention that on 1 March 2008 the authorities dispersed peaceful and lawful demonstrations and that his detention was imposed as a punishment for his political ideas and participation in demonstrations.

63. In his completed application form lodged on 20 March 2009 the applicant also complains under Article 3 of the Convention about

(a) the manner in which his questioning between 10 p.m. on 1 March 2008 and 2 a.m. on 2 March 2008 was conducted;

(b) the fact that the investigator insisted that his wife bring his passport to the police station;

(c) the acts which took place during his transfer to Nubarashen detention facility on 6 March 2008;

(d) the fact that he was subjected to ill-treatment during his stay between 7 and 14 March 2008 in cell no. 4 at Nubarashen detention facility which he shared with a repeat offender, alleging that the acts which took place in that cell were condoned by the prison administration and that in fact he was placed in that cell on purpose as a punishment for declaring a hunger strike;

(e) the alleged failure of the authorities to carry out an effective investigation into all the above-mentioned allegations; and

(f) degrading conditions, including overcrowding, in cells nos. 4, 9, 10, 20 and 42 at Nubarashen detention facility.

64. The applicant complains under Article 6 § 3 (c) of the Convention that he was deprived of legal assistance between 1 and 3 March 2008.

THE LAW

A. Conditions of the applicant's detention

65. The applicant complains about the conditions of his detention. He invokes Article 3 of the Convention which provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

66. 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 lawfulness of the applicant's detention between 23 September and 3 October 2008 and the alleged lack of relevant and sufficient reasons for his continued detention

67. The applicant complains that his detention between 23 September and 3 October 2008 was unlawful. He further complains that the courts failed to provide relevant and sufficient reasons for his continued detention. He invokes Article 5 §§ 1 and 3 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;

...

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.”

68. 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. Other alleged violations of the Convention

69. The applicant also raised a number of other complaints under Article 3, Article 5 §§ 1 and 3, Article 6 § 3 (c) and Article 11 of the Convention (see paragraphs 58-59 and 62-64 above).

70. 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 conditions of his detention, the alleged unlawfulness of his detention between 23 September and 3 October 2008, and the alleged lack of relevant and sufficient reasons for his continued detention;

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President