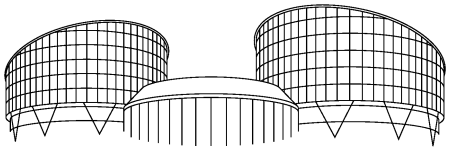

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BADALYAN v. ARMENIA

(Application no. 44286/12)

JUDGMENT

STRASBOURG

20 July 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Badalyan v. Armenia,

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

Aleš Pejchal, *President,*
Armen Harutyunyan,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 11 July 2017,

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

PROCEDURE

1. The case originated in an application (no. 44286/12) 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 Armen Badalyan ("the applicant"), on 28 June 2012.

2. The applicant was represented by Ms L. Sahakyan and Mr R. Sahakyan, lawyers 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 11 September 2013 the complaint under Article 5 § 3 of the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1976 and lives in Metsamor.

5. On 23 July 2011 the applicant was arrested on suspicion of threatening to use violence against the investigator in charge of the criminal case against his ex-wife.

6. On 25 July 2011 the applicant was charged with the same crime.

7. On the same date the investigator filed a motion with the Armavir Regional Court seeking to have the applicant detained for a period of two months.

8. On the same date the Regional Court examined and granted the investigator's application, ordering the applicant's detention for a period of two months, namely until 23 September 2011. It found that the motion was substantiated, since the applicant partially admitted his guilt and the case materials provided sufficient grounds for believing that he might abscond and obstruct the investigation, having regard to the nature and degree of dangerousness of the offence in question.

9. On an unspecified date 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 and that they failed to take into account the applicant's personality.

10. On 11 August 2011 the 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. It also noted that less severe measures were insufficient to safeguard the applicant's proper conduct.

11. On 19 August 2011 the applicant lodged a cassation appeal against the decision of 11 August 2011 of the Court of Appeal.

12. On 9 September 2011 the investigation into the applicant's case was concluded and the case was transferred to the Regional Court for trial.

13. On 13 September 2011 the applicant's criminal case was set down for trial. By the same decision the trial court decided that the applicant's detention on remand was "to remain unchanged".

14. On 17 September 2011 the Cassation Court returned the applicant's cassation appeal as it was unsubstantiated and did not met the formal requirements imposed by law.

15. On an unspecified date the applicant filed a motion with the Regional Court seeking to be released. He argued, *inter alia*, that there were not sufficient reasons to keep him in detention.

16. On 13 December 2011 the Regional Court examined and dismissed this motion. The Regional Court found that the applicant's detention was ordered by its decision of 13 September 2011. It also noted that the existing materials of the case were sufficient to conclude that the applicant's detention was justified.

17. On 19 December 2011 the applicant lodged an appeal against this decision.

18. On 28 December 2011 the Criminal Court of Appeal left the appeal unexamined. The Criminal Court of Appeal found that there was no possibility under domestic law to appeal against the decision of the District Court "to leave the applicant's detention unchanged".

19. The applicant lodged an appeal against this decision.

20. On 20 March 2012 the Court of Cassation declared the applicant's appeal inadmissible for lack of merit.

21. On 11 May 2012 the applicant filed a new motion with the Regional Court seeking to be released. He argued, *inter alia,* that the collection of evidence against him had been finalised and that there were not sufficient reasons to keep him under detention.

22. On 4 June 2012 the Regional Court dismissed the applicant's motion having regard to the dangerousness and nature of the alleged offence and the fact that the applicant might abscond and obstruct the investigation.

23. On 14 June 2012 the applicant lodged an appeal against this decision.

24. On 19 June 2012 the Criminal Court of Appeal left the applicant's appeal unexamined on the same grounds as indicated in its decision of 28 December 2011.

25. The applicant lodged an appeal against this decision.

26. On 17 August 2012 the Court of Cassation declared the applicant's appeal inadmissible for lack of merit.

27. On 6 August 2012 the Regional Court found the applicant guilty as charged, imposing a sentence of one and a half years' imprisonment.

II. RELEVANT DOMESTIC LAW

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

28. The relevant provisions of the Code of Criminal procedure relating to the imposition of detention on remand and other preventive measures are set out in the Court's judgment in the case of Ara Harutyunyan (see *Ara Harutyunyan v. Armenia,* no. 629/11, §§ 30-37, 20 October 2016).

THE LAW

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

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

30. Article 5 § 3 of the Convention reads as follows:

> "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."

31. The Government contested the applicant's argument.

A. Admissibility

32. The Government argued that the applicant had not exhausted all available and effective domestic remedies since his cassation appeal against the decision of 11 August 2011 had not met the formal requirements and had therefore been returned by the Cassation Court on 17 September 2011 as being unsubstantiated and not meeting the requirements of law. His application should therefore be declared inadmissible under Article 35 §§ 1 and 4 of the Convention for the non-exhaustion of domestic remedies.

33. The applicant maintained that the fact whether or not all domestic remedies had been exhausted in respect of the initial decision to detain him, his detention had subsequently been extended by the trial court and, in respect of this extension, all domestic remedies had been exhausted. The Cassation Court could have also requested the applicant to complement his appeal, which possibility was provided by the law and which practice the Cassation Court had had in the past. The Government's objection was thus groundless and should be rejected.

34. The Court agrees with the applicant. Even assuming that, in respect of the initial decision to detain the applicant, he had not used all effective remedies available to him, such remedies had been used in respect of the trial court's decision to prolong the applicant's detention. The Government's preliminary objection must therefore be rejected. Consequently, the application is not inadmissible within the meaning of Article 35 §§ 1 and 4 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

35. The applicant maintained that the Government had not provided any factual grounds to justify that the reasons for detention provided by the domestic courts had been "relevant" and "sufficient". These reasons had been stated by the domestic courts in an abstract manner without showing any facts justifying the detention or its continuation. This contradicted even the national case-law since the Cassation Court had already in 2008 set a new and higher standard for the reasons for detention, noting that they needed to be based on facts rather than on abstract findings or citations of the statutory procedural norms. The applicant's detention had thus violated Article 5 § 3 of the Convention.

36. The Government submitted that the length of the applicant's detention had not been in breach of the "reasonable time" requirement in Article 5 § 3 of the Convention and that the domestic courts had provided reasons for the applicant's detention. The initial decision to detain the applicant had been based on the fact that there had been a risk that the

applicant could abscond, obstruct the examination of the case or commit further offences. In the Court's case-law all these grounds had been accepted as "relevant" and "sufficient" reasons capable of justifying the detention. The domestic courts had justified the need of the applicant's detention and its prolongation by the dangerous nature and gravity of the alleged offence, punishable with imprisonment of maximum five years, which increased the probability of his evading criminal liability and punishment, if released. Moreover, the applicant had threatened to use violence against the investigator. There was thus no violation of Article 5 § 3 of the Convention.

2. The Court's assessment

(a) General principles

37. The Court reiterates that, according to its established case-law under Article 5 § 3 of the Convention, the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV; and *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

38. The Court has also held that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. The requirement for the judicial officer to give "relevant" and "sufficient" reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87 and 102, 5 July 2016). Furthermore, when deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures for ensuring his appearance at trial (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Idalov*, cited above, § 140).

39. Justifications which have been deemed "relevant" and "sufficient" reasons in the Court's case-law have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder and the need to protect the detainee (see, for instance, *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9; *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7; *Tomasi v. France*, 27 August 1992, § 95, Series A no. 241-A; *Toth v. Austria*, 12 December

1991, § 70, Series A no. 224; *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; and *I.A. v. France*, 23 September1998, § 108, *Reports of Judgments and Decisions* 1998-VII).

40. The presumption is always in favour of release. The national judicial authorities must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, among other authorities, *Buzadji*, cited above, §§ 89 and 91). Arguments for and against release must not be general and abstract (see, among other authorities, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts); *Becciev v. Moldova*, no. 9190/03, § 56, 4 October 2005; *Piruzyan v. Armenia*, no. 33376/07, § 92, 26 June 2012; *Zayidov v. Azerbaijan*, no. 11948/08, § 57, 20 February 2014; and *Merčep v. Croatia*, no. 12301/12, § 79, 26 April 2016).

41. The danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, among other authorities, *Letellier*, cited above, § 43; *Becciev*, cited above, § 58; *Piruzyan*, cited above, § 95; and *Zayidov*, cited above, § 59). Consideration must be given to the character of the person involved, his or her morals, home, occupation, assets, family ties and other links with the country in which he or she is being prosecuted, as well as the person's international contacts (see, among other authorities, *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8; and *Buzadji*, cited above, § 90).

42. Furthermore, the danger of the accused's hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*, it has to be supported by factual evidence (see *Trzaska v. Poland*, no. 25982/94, § 65, 11 July 2000; *Becciev*, cited above, § 59; *Piruzyan*, cited above, § 96; and *Merčep*, cited above, § 89).

(b) Application of the above principles in the present case

43. In the present case, the applicant alleged that the domestic courts had failed to provide "relevant" and "sufficient" reasons for their decisions to impose and extend his detention, in breach of Article 5 § 3 of the Convention. The Court notes at the outset that Article 135 of the Code of Criminal Procedure prescribes the grounds which justify the imposition of a preventive measure, including detention. These appear to resemble those

established in the Court's case-law under Article 5 § 3 of the Convention. Furthermore, Article 136 of the Code requires the decision imposing detention to be reasoned and to contain a substantiation of the necessity of choosing detention as a preventive measure.

44. On 25 July 2011 the Regional Court granted the investigator's application for the applicant's detention and ordered his detention for a period of two months, namely until 23 September 2011. In so doing, the Regional Court relied, in addition to the existence of reasonable suspicion, on the risk of the applicant's absconding and obstructing the investigation as the grounds justifying his detention.

45. The Court notes, however, that the Regional Court limited itself to indicating those grounds in its decision in an abstract and stereotyped manner, without providing any reasons, including facts or evidence, as to why it found those grounds to be justified in the applicant's case and basically confining its reasoning to a mere citation of the relevant parts of Article 135 of the Code of Criminal Procedure (see paragraph 8 above). No explanation was provided as to why the court found the investigator's application to be well-founded or why it was necessary. The Regional Court therefore failed to take into account such important factors as the applicant's behaviour during the investigation and his personal situation, as well as any other relevant circumstances. It also failed to address any of the objections raised by the applicant or to consider the possibility of releasing him on bail.

46. The Court observes that the applicant's appeals and applications for release, as well as the subsequent extension of the applicant's detention, were examined by the courts in a similar manner (see paragraphs 10, 13, 16 and 22 above). The Court has frequently found a violation of Article 5 § 3 of the Convention where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see, among other authorities, *Smirnova*, cited above, § 70; *Vasilkoski and Others v. "the former Yugoslav Republic of Macedonia"*, no. 28169/08, § 64, 28 October 2010; and *Tretyakov v. Ukraine*, no. 16698/05, § 59, 29 September 2011).

47. The Court notes that, after some twelve months in detention, the applicant was convicted and sentenced to an imprisonment of one and a half years (see paragraph 27 above). No justification was provided at any point in time as to why it had not been possible to release him during the pre-trial investigation or the trial.

48. The Court lastly notes that the use of stereotyped formulae when imposing and extending detention appears to be a recurring problem in Armenia and a violation of Article 5 § 3 of the Convention has already been found in a number of cases (see *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 v. Armenia*, cited above, §§ 54-62).

49. In the light of the above, the Court considers that the domestic courts failed to provide relevant and sufficient reasons, in addition to the existence of reasonable suspicion, for their decisions imposing and extending the applicant's detention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

53. The Government considered that the applicant had failed to substantiate his claim for non-pecuniary damage by reasoned and documented arguments. In any event, his claim was groundless and should therefore be rejected. However, if the Court decided to award compensation for non-pecuniary damage, finding a violation would constitute in itself sufficient just satisfaction. In any event the applicant's claim was exaggerated.

54. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violation found. It therefore awards him EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

56. 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 § 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 20 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Aleš Pejchal
Deputy Registrar	President