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

FOURTH SECTION

DECISION

Application no. 43/19
Samvel MAYRAPETYAN
against Armenia

The European Court of Human Rights (Fourth Section), sitting on 8 March 2022 as a Committee composed of:

Jolien Schukking, *President,*
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 43/19) against Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 2 January 2019 by an Armenian national, Mr Samvel Mayrapetyan, born in 1959 and living in Yerevan ("the applicant"), who was represented by Mr A. Ghazaryan and Ms M. Baghdasaryan, lawyers practising in Yerevan;

the decision to give notice of the complaints under Articles 2 and 3 of the Convention concerning the deterioration of the applicant's state of health while in detention, the authorities' refusal to authorise his travel abroad for urgent medical treatment and the alleged lack of relevant medication and dietary food during detention to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare the remainder of the application inadmissible;

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant, a well-known businessman, owner and director of an Armenian television channel, is under a criminal investigation in connection with alleged corruption-related offences. On 6 October 2018 he was placed in pre-trial detention and admitted to Nubarashen detention facility.

2. The applicant suffers from, *inter alia*, gallstone disease and chronic pancreatitis. In November 2016, being in a critical state (acute abdomen, pancreatitis and toxic shock), he underwent an urgent endoscopic surgery in Yerevan. Shortly afterwards he suffered respiratory failure and was put in a medically-induced coma (being on a ventilator). The applicant was urgently transferred to a clinic in Dresden, Germany where he received inpatient treatment, including in the intensive care unit, for sepsis and acute necrotising pancreatitis with multiple pancreatic abscesses. He returned to Armenia in May 2017 and his treatment continued under the supervision of his German doctor.

3. On 15 October 2018 the applicant was transferred to Armavir detention facility. On the same date doctor M., his treating doctor in Armenia, visited him. The doctor indicated the medical examinations which needed to be carried out and prescribed three types of medication. He also noted that the applicant should follow a diet with a frequent intake of small amounts of warm food. On the same date the applicant submitted a written request to the administration of the detention facility seeking permission to have a food heater in his cell considering that he needed to eat in small portions and that the food should be of moderate temperature. That request was granted.

4. The applicant underwent an ultrasound examination on 31 October 2018 which showed, *inter alia*, the presence of a stone in the gallbladder as well as a stone in the inferior pole calyx of the kidney.

5. On 25 December 2018 the applicant was admitted to a private clinic where he stayed until 28 December 2018. On the latter date, based on the results of the applicant's examinations, a panel of medical professionals in the field of surgery issued a joint opinion in which they concluded that the stone in the gallbladder had migrated into the common bile duct which had resulted in repeated acute pancreatitis and advised that the gallstone be removed from the common bile duct via ERCP (endoscopic retrograde cholangiopancreatography). However, considering the applicant's past pancreatic necrosis and the complications associated with the previous ERCP and the past necessity of performing transluminal drainage of peripancreatic abscesses, another endoscopic intervention risked bringing about an aggravation of the pancreatitis with its follow-up complications. The panel therefore advised that the applicant receive treatment at the same foreign clinic as before.

6. In the meantime, by decision of 27 December 2018 the Yerevan Court of General Jurisdiction released the applicant on bail considering his medical condition.

7. On 2 January 2019 the applicant submitted a request under Rule 39 of the Rules of Court requesting the Court to indicate to the respondent Government to return his passport and authorise his travel to Germany for life-saving medical treatment.

8. Following receipt of information from the respondent Government and the applicant's submissions in reply, on 17 January 2019 the Court (the duty judge) decided to indicate to the respondent Government, under Rule 39, to ensure urgently that the applicant receives adequate medical care in accordance with his (then) current state of health and the relevant instructions of medical professionals including, when necessary, transluminal drainage procedure (see paragraph 9 below).

9. On 23 January 2019 a medical panel appointed by the Minister of Health noted that transluminal drainage of the pancreas was indicated for the applicant while such medical procedure was not practised in Armenia because of the absence of the relevant equipment and expertise. The panel also noted that in Armenia there were no methods for elimination of peripancreatic abscesses and necrotic tissues that would have a level of efficiency and safety comparable to that of transluminal drainage.

10. On 24 January 2019 the applicant's preventive measure (bail) was replaced by a personal surety and his travel to Germany for medical treatment was authorised.

11. On 26 January 2019 the applicant left for Germany and, according to the submitted medical evidence, received the necessary treatment.

12. After attempts in August and October 2019 to secure the applicant's appearance before the investigating body, on 3 March 2020 the investigator decided to cancel the personal surety and seek judicial authorisation for the applicant's detention.

13. On 9 March 2020 the Yerevan Court of General Jurisdiction ordered the applicant's detention. The applicant was put on the wanted list.

14. As of 12 March 2021, the date when the exchange of observations between the parties was finalised, the applicant had not returned to Armenia.

THE COURT'S ASSESSMENT

15. The Court considers it unnecessary to address the Government's objection as to non-exhaustion of domestic remedies, since the application is in any event inadmissible for the reasons set out below.

16. The allegations of persons suffering from serious illnesses fall under Article 2 of the Convention when the circumstances potentially engage the responsibility of the State (see, for instance, *L.C.B. v. the United Kingdom*, 9 June 1998, §§ 36-41, *Reports of Judgments and Decisions* 1998-III,

concerning an applicant suffering from leukaemia; *G.N. and Others v. Italy*, no. 43134/05, §§ 69-70, 1 December 2009, concerning applicants suffering from a potentially life-threatening disease, hepatitis; and *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, §§ 8 and 106-08, ECHR 2012 (extracts), concerning applicants suffering from different forms of terminal cancer). Furthermore, an issue may arise under Article 2 where it is shown that the authorities of a Contracting State have put an individual's life at risk through the denial of the health care which they have undertaken to make available to the population generally (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 173, 19 December 2017).

17. There is nothing to indicate that the applicant was in a life-threatening condition when he was placed in detention. He had suffered from gallstone disease and chronic pancreatitis before his detention and had received relevant treatment in Germany after the sharp deterioration of his health in November 2016 (see paragraph 2 above). Although the applicant remained under medical supervision following his return, there is nothing to suggest that his medical condition, at least at the moment of his placement in detention, required anything more than regular medical check-ups and observance of the relevant medical recommendations. There are no elements in the file to indicate that the authorities, being in possession of any specific information about the applicant's medical condition, had put his life in danger (compare and contrast *Aftanache v. Romania*, no. 999/19, §§ 52 and 53, 26 May 2020). Furthermore, once the applicant's condition was found to necessitate a further medical intervention, he was released on bail from detention on health grounds (see paragraphs 5 and 6 above) and, following the receipt of the opinion of the medical panel appointed by the Minister of Health (see paragraph 9 above), the imposed preventive measure was lifted and the applicant was allowed to leave for Germany where he received the necessary treatment (see paragraphs 10 and 11 above).

18. Against this background, the Court finds that the applicant can no longer claim to be a victim of a breach of Article 2 in respect of these complaints, and finds that this part of the application must be rejected as incompatible *ratione personae* pursuant to Article 35 §§ 3 and 4 of the Convention.

19. As to the complaints under Article 3 of the Convention, the relevant principles with respect to medical care to be provided to persons deprived of their liberty have been summarised in the Court's judgment in *Blokhin v. Russia* ([GC], no. 47152/06, §§ 135-37, 23 March 2016).

20. According to the material in the case file, during the applicant's detention which lasted a relatively short period of time that is from 6 October until 27 December 2018, he had unlimited access to doctors of his choosing and was admitted to civilian hospitals, including private clinics for medical examination when necessary (see paragraphs 3, 4 and 5 above). There is therefore nothing to indicate that the applicant was not provided with

adequate medical care while in detention (compare and contrast *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 115, 15 June 2010). Although the applicant's health condition deteriorated while in detention, there is no medical evidence to suggest that this was due to any failure on the part of the authorities to ensure his adequate medical care and not because of the natural progression of his disease (see paragraph 2 above).

21. The Government admitted that of three medications prescribed to the applicant by his treating doctor (see paragraph 3 above) only one was available in the pharmacy stock of the penitentiary service and acknowledged that the applicant had received the requisite medication from his relatives. However, the Court has considered that, in so far as provision of health care to detained persons is concerned, the States are bound to provide all medical care that their resources might permit (see *Aleksanyan v. Russia*, no. 46468/06, § 148, 22 December 2008). In particular, the Court found that in the circumstances where the applicant had not depended on the detention facility pharmacy's stock and could receive necessary medication from his relatives while the applicant had not alleged that procuring those medicines had imposed an excessive financial burden on him or his relatives, the absence of the relevant medication in the prison pharmacy was not as such contrary to Article 3 (ibid., § 149).

22. In so far as the applicant complained that the prison authorities failed to provide him with meals compatible with his diet, the Court notes that, upon visiting the applicant in Armavir detention facility, his treating doctor merely stated that the applicant needed to eat dietary food in small portions and that the food needed to be of moderate temperature. No specific dietary recommendations were made. In his turn, the applicant, referring to his dietary needs, had requested to have a food heater in his cell which had been swiftly granted (see paragraph 3 above). In these circumstances, the applicant's allegation that he needed a special type of food, relying on the written statement of his wife according to which she was obliged to ensure his meals on a daily basis, is not sufficient to conclude that there was a specific type of diet which was medically prescribed to the applicant, at least during the period of his detention, which was not complied with by the authorities. In any event, there is nothing to suggest that the applicant requested to be provided with specific food and his request was rejected (compare and contrast *Ebedin Abi v. Turkey*, no. 10839/09, §§ 33 and 34, 13 March 2018). As noted above, he merely requested permission from the prison authorities to have a food heater which was granted.

23. It follows that this part of the application must be rejected as manifestly ill-founded in accordance with Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 31 March 2022.

Ilse Freiwirth Deputy Registrar	Jolien Schukking President