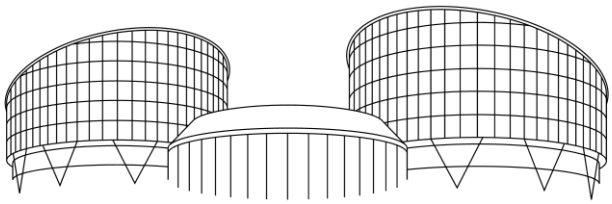

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

THIRD SECTION

CASE OF GASPARYAN v. ARMENIA (NO. 2)

(Application no. 22571/05)

JUDGMENT

STRASBOURG

16 June 2009

FINAL

16/09/2009

This judgment may be subject to editorial revision.

In the case of Gasparyan v. Armenia (no. 2)**,**

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

Josep Casadevall, *President*,
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Luis López Guerra, *judges*,
and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 26 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 22571/05) 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 Maksim Gasparyan ("the applicant"), on 18 August 2004.

2. The applicant was represented by Mr M. Muller, Mr T. Otty, Mr K. Yildiz and Ms A. Stock, lawyers of the Kurdish Human Rights Project (KHRP) based in London, and Mr T. Ter-Yesayan, 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. On 5 September 2007 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1948 and lives in Yerevan.

5. The applicant alleged that on 5 and 9 April 2004 at 9 a.m. he was taken by police officers to Shengavit District Police Station of Yerevan where he was kept in a locked room until 7 p.m. and 6 p.m. respectively. He

was neither questioned nor offered any explanation as to why he was being detained by the police. No records of his arrests were drawn up. The applicant claimed that these arrests were intended to prevent his participation in major demonstrations which were organised on those dates in Yerevan by the political opposition.

6. On 20 May 2004 the applicant was taken to the Shengavit District Police Station of Yerevan.

7. According to the record of the applicant's arrest (*արձանագրություն բերման ենթարկելու մասին*), the applicant was "arrested at 7.45 p.m. on the Nzhdeh street ... for disturbing public order".

8. According to the applicant, he was in reality arrested at home at 5 p.m. after a police officer visited him and asked him to accompany him to the police station.

9. The arresting police officers reported to the chief of police that:

> "... on 20 May 2004 at ... [we] were patrolling on Nzhdeh Square and noticed a man who was swearing out loud. We approached him and tried to call him to order, however, he did not follow our instructions and continued his unpleasant behaviour. The said citizen was brought to the police where it was established that he was [Mr Gasparyan]."

10. The police officers drew up a record of an administrative offence (*վարչական իրավախախտման արձանագրություն*) in which it was stated that the applicant was accused of committing an offence envisaged under Article 182 of the Code of Administrative Offences (CAO). The applicant refused to sign any of the above documents or to make a written statement.

11. The applicant alleged that at the police station he was first taken to the chief of the police station. Thereafter he was questioned about his participation in demonstrations and about his support for the opposition. He told the police officers that he had not committed any public order offence, to which they replied that in any event the case had already been decided. The applicant asked them to allow him to appoint a lawyer, which they refused.

12. The Government contested this allegation and claimed that the police officers had informed the applicant of his procedural rights and had advised him to avail himself of his right to have a lawyer but he did not wish to do so.

13. According to the applicant, at 10 p.m. he was taken to Judge G. of the Shengavit District Court of Yerevan (*Երևան քաղաքի Շենգավիթ համայնքի առաջին ատյանի դատարան*) who, after a brief hearing, sentenced him under Article 182 of the CAO to eight days of administrative detention. The judge's entire finding amounted to the following sentence:

> "On 20 May 2004 at around 7 p.m. [the applicant] was using unaddressed swear words on Nzhdeh Square, and when the police officers warned him and called him to

order, [the applicant] became upset, continued to behave in an unpleasant manner, and disobeyed the lawful orders of the police officers, for which he was brought to the Shengavit District Police Station...”

II. RELEVANT DOMESTIC LAW

14. For a summary of the relevant provisions of the CAO see the judgment in the case of *Galstyan v. Armenia* (no. 26986/03, § 26, 15 November 2007). The provisions of the CAO which were not cited in the above judgment, as in force at the material time, provide:

Article 182: Maliciously disobeying a lawful order or demand of a police officer or a member of the voluntary police

“Maliciously disobeying a lawful order or demand of a police officer or a member of the voluntary police made in the performance of his duties of preserving public order shall result in the imposition of a fine of between 50% of and double the fixed minimum wage, or of correctional labour for between one and two months with the deduction of 20% of earnings or, in cases where, in the circumstances of the case, taking into account the offender’s personality, the application of these measures would be deemed insufficient, of administrative detention not exceeding 15 days.”

THE LAW

I. THE GOVERNMENT’S OBJECTION AS TO NON-EXHAUSTION

15. The Government claimed that the applicant had failed to exhaust domestic remedies in respect of the decision of 22 March 2003 by not lodging an appeal with the President of the Criminal and Military Court of Appeal under Article 294 of the CAO.

16. The applicant contested the Government’s objection.

17. The Court notes that it has already examined this issue and found that the review possibility provided by Article 294 of the CAO was not an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Galstyan*, cited above, § 42). The Government’s preliminary objection must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

18. The applicant raised several complaints under Article 5 of the Convention, which, in so far as relevant, reads as follows:

"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:

(a) the lawful detention of a person after conviction by a competent court;

...

(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;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

Admissibility

1. The applicant's alleged arrests on 5 and 9 April 2004

19. The applicant complained under Article 5 §§ 1 and 2 of the Convention that he was twice subjected to unlawful arrest, on 5 and 9 April 2004 respectively. The Court notes at the outset that the applicant never complained about these alleged arrests to any domestic authority, which may raise questions as to whether he has exhausted the domestic remedies. In any event, even assuming that there were no effective remedies to exhaust, there is no evidence in the case file to support the applicant's allegation that he was arrested on the above dates.

20. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant's conviction of 20 May 2004

21. The Government submitted that the applicant's administrative detention had been compatible with the requirements of Article 5 § 1 (a). His case had been examined by the court of first instance, which was the sole competent authority to do so. As to the judicial supervision required by

Article 5 § 4, this had been incorporated in the first instance court's decision.

22. The applicant submitted that his administrative detention was arbitrary and unlawful in violation of Article 5 § 1. He further submitted that the manner in which the trial was conducted fell short of the requirements of Article 5 § 4.

23. The Court observes that it has already examined similar complaints under Article 5 § 1 and found that the administrative detention had been imposed on the applicant after a "conviction by a competent court" within the meaning of Article 5 § 1 (a) and in accordance with a procedure prescribed by law (see *Galstyan*, cited above, §§ 47-49). It sees no reason to depart from that finding in the present case. Furthermore, the Court reiterates that where a sentence of imprisonment is pronounced after a "conviction by a competent court" within the meaning of Article 5 § 1 (a), the supervision required by Article 5 § 4 is incorporated in that decision (see *Galstyan*, cited above, § 51). However, as already indicated above, no issue arises in the present case under Article 5 § 1 (a).

24. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

25. The applicant made several complaints about the administrative proceedings against him under Article 6 §§ 1 and 3 (a)-(d) of the Convention, which, in so far as relevant, provide:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

A. Admissibility

26. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

27. The Government submitted that the applicant had a fair and public hearing. He had failed to submit any proof in support of his allegation that the judge was not impartial. The applicant had been promptly provided with detailed information concerning the charge against him. Furthermore, he had been afforded adequate time and facilities for the preparation of his defence. In particular, the applicant had been familiarised with the materials of the case against him and informed about his procedural rights, including his right to file motions, to call witnesses and to have a lawyer, which he did not wish to do.

28. The applicant submitted that the trial had not been fair and the tribunal had not been independent and impartial. Furthermore, the trial had not been public since it had been held at a late hour in a judge's office. The speed with which the proceedings had been conducted, the failure to provide him with adequate time and facilities to prepare his defence and the fact that he was denied the right to call or examine witnesses or give evidence in his defence put him at a significant disadvantage vis-à-vis his opponent. The materials of the case, including the accusation against him, had not been revealed to him prior to the hearing and the court had failed to provide a reasoned decision. He had not been informed of his procedural rights and had been denied access to a lawyer both prior to and during the hearing which, moreover, had lasted only a few minutes.

29. The Court notes from the outset that similar facts and complaints have already been examined in a number of cases against Armenia, in which the Court found a violation of Article 6 § 3 (b) taken together with Article 6 § 1 (see *Galstyan*, cited above, §§ 86-88, and *Ashughyan v. Armenia*, no. 33268/03, §§ 66-67, 17 July 2008). The circumstances of the present case are practically identical. The administrative case against the applicant was examined in an expedited procedure under Article 277 of the CAO. The applicant was similarly taken to and kept in a police station – without any contact with the outside world – where he was presented with a charge and in a matter of hours taken to a court and convicted. The Court therefore does not see any reason to reach a different finding in the present case and concludes that the applicant did not have a fair hearing, in particular on account of not being afforded adequate time and facilities for the preparation of his defence

30. There has accordingly been a violation of Article 6 § 3 taken together with Article 6 § 1 of the Convention.

31. In view of the finding made in the preceding paragraph, the Court does not consider it necessary to examine also the other alleged violations of Article 6.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 7

32. The applicant complained under Article 13 of the Convention that he had no right to contest the decision of 20 May 2004. The Court considers it necessary to examine this issue under Article 2 of Protocol No. 7 which, in so far as relevant, reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law."

A. Admissibility

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

B. Merits

34. The Government submitted that the applicant had the right to have his conviction reviewed, this right being prescribed by Article 294 of the CAO.

35. The applicant submitted that the review procedure prescribed by Article 294 of the CAO did not afford him a clear and accessible right to appeal.

36. The Court notes that the applicant in the present case was convicted under the same procedure as in the above-mentioned case of *Galstyan*, in which the Court concluded that the applicant did not have at his disposal an appeal procedure which would satisfy the requirements of Article 2 of Protocol No. 7 (see *Galstyan*, cited above, §§ 124-27). The Court does not see any reason to depart from that finding in the present case.

37. Accordingly, there has been a violation of Article 2 of Protocol No. 7.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. Lastly, the applicant complained that his conviction violated his rights guaranteed by Articles 11 and 14 of the Convention.

39. 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

42. The Government submitted that, if the Court were to find a violation, that would be sufficient just satisfaction. In any event, the amount claimed was excessive.

43. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of being sanctioned through unfair proceedings and having no possibility to appeal against this sanction. Ruling on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

44. In respect of the costs and expenses incurred before the Court the applicant claimed USD 3,150 for the fees of his domestic lawyer (21 hours at USD 150 per hour), 5,955 pounds sterling (GBP) for the fees of his three United Kingdom-based lawyers, including two KHRP lawyers and one barrister (totals of about 7, 4 and 22 hours respectively at GBP 150 per hour), and GBP 385 for administrative costs incurred by the KHRP. The applicant submitted detailed time sheets stating hourly rates in support of his claims.

45. The Government submitted that the claims in respect of the domestic and foreign lawyers were not duly substantiated with documentary proof, since the applicant had failed to produce any contracts certifying that there was an agreement with those lawyers to provide legal services at the alleged hourly rate, while the submitted time sheets and invoice lacked any signatures or seals. Furthermore, the applicant had used the services of an excessive number of lawyers, despite the fact that the case was not so complex as to justify such a need. Finally, there was no documentary proof submitted of the administrative costs allegedly incurred by the KHRP.

46. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court considers that not all the legal costs claimed were necessarily and reasonably incurred, including some duplication in the work carried out by the foreign and the domestic lawyers, as set out in the relevant time sheets. Furthermore, a reduction must also be applied in view of the fact that a substantial part of the initial application and communicated complaints was declared inadmissible. Making its own estimate based on the information available and deciding on an equitable basis, the Court awards the applicant EUR 3,000 in respect of costs and expenses, to be paid in pounds sterling into his representatives' bank account in the United Kingdom.

C. Default interest

47. The Court considers it appropriate that the default interest 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 complaints under Article 6 §§ 1 and 3 (a)-(d) of the Convention and Article 2 of Protocol No. 7 admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (b) of the Convention in that the applicant did not have a fair hearing, in particular on account of the fact that he was not afforded adequate time and facilities for the preparation of his defence in the administrative proceedings against him;

3. *Holds* that there is no need to examine the other complaints under Article 6 of the Convention;

4. *Holds* that there has been a violation of Article 2 of Protocol No. 7;

5. *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, the following amounts:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into his representatives' bank account in the United Kingdom;

(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;

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

Done in English, and notified in writing on 16 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President