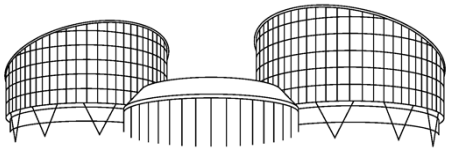

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HAYRAPETYAN v. ARMENIA

(Application no. 69931/10)

JUDGMENT

STRASBOURG

21 December 2021

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

In the case of Hayrapetyan v. Armenia,

The European Court of Human Rights (Fourth Section), sitting 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. 69931/10) 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") on 18 November 2010 by an Armenian national, Mr Gevorg Hayrapetyan, born in 1963 and living in Yerevan ("the applicant") who was represented by Mr W. Bowring and Ms S. Safaryan, lawyers practising in London and Yerevan respectively;

the decision to give notice of the complaints concerning the alleged breach of the right to a fair and public hearing and the right to respect for correspondence to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 30 November 2021,

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

SUBJECT-MATTER OF THE CASE

1. The application concerns criminal proceedings for high treason against the applicant. He raises complaints under Articles 6 and 8 of the Convention.

2. As a result of a search of the applicant's apartment, the National Security Service (NSS) found various types of weapons and ammunition, personal notes, compact discs, military maps and military registry books. Some of those materials apparently contained classified information on various military operations, military orders and their execution, military shifts and equipment and other information of military significance.

3. In September 2009 the NSS charged the applicant with high treason, spying for the special services of Azerbaijan, and illegal possession of firearms. The applicant was taken in pre-trial detention. The NSS further prohibited the applicant from receiving visits (except from his lawyer) and from making or receiving telephone calls at the detention facility.

4. The applicant's trial before the Avan and Nor-Nork District Court of Yerevan ("the trial court") was conducted *in camera*. By its decision of 22 January 2010 the trial court granted the prosecution's request to conduct

the trial *in camera* on the grounds that the case contained state and official secrets.

5. During the trial the applicant complained that some of the materials of the criminal case were illegible, namely his pre-trial testimony and witness statements, as they had been handwritten by the investigator. The trial court ordered the prosecution to produce those materials in legible form. The prosecution submitted the typewritten versions of the impugned documents.

6. On 13 May 2010 the trial court lifted the prohibition on the applicant's visits.

7. By the judgment of 25 October 2010, which was fully upheld on appeal, the trial court found the applicant guilty as charged and sentenced him to twelve years' imprisonment. It relied on witness evidence obtained during the investigation and confirmed in court, the applicant's intercepted communications and various pieces of material evidence, such as photographs of military positions, military maps, books, equipment and other materials of a military nature with an indication "top secret". As regards the handwritten materials of the criminal case indicated by the applicant as illegible, the trial court concluded that his rights had not been breached as he had been questioned by the investigator in the presence of his lawyer, the materials of the criminal case had been disclosed to him and to his lawyer, and none of them had complained about the illegibility of those materials at that stage.

8. On the same date the trial court also lifted the prohibition on the applicant to make or receive telephone calls at the detention facility.

9. The applicant complained under Article 6 § 1 of the Convention that the domestic courts' decision to conduct the entirety of the judicial proceedings *in camera* had led to his trial being unfair. He further complained under the same provision that the domestic courts relied on illegible handwritten materials in evidence against him. The applicant also complained under Article 8 of the Convention of an interference with his right to respect for his correspondence on account of the restriction of his telephone conversations during the investigation and trial.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LACK OF A PUBLIC HEARING

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

11. The general principles concerning the public nature of judicial proceedings and the derogation from that principle have been summarized in the cases of *Belashev v. Russia* (no. 28617/03, §§ 79-80, 4 December 2008),

Welke and Białek v. Poland (no. 15924/05, §§ 73-74, 1 March 2011) and *Yam v. the United Kingdom* (no. 31295/11, §§ 52-57, 16 January 2020). In particular, the Court, in interpreting the right to a public hearing, has applied a test of strict necessity whatever the justification advanced for the lack of publicity. Thus before excluding the public from criminal proceedings, the national court must make a specific finding that exclusion is necessary to protect a compelling governmental interest and must limit secrecy to the extent necessary to preserve that interest (see *Yam,* cited above, § 54, with further references).

12. The trial court, at the request of the prosecutor, decided on 22 January 2010 to hold the applicant's entire trial *in camera*, considering that a public hearing might disclose information containing state and official secrets (see paragraph 4 above). It did not specify what particular circumstances justified its decision to hold the entire trial *in camera*.

13. While the Court accepts that the decision at issue was based on national security concerns considering that the case against the applicant related to the examination of evidence potentially involving state or official secrets, it reiterates that the mere presence of classified information in the case file does not automatically imply a need to close a trial to the public, without balancing openness with national security concerns (see *Belashev*, cited above, § 83).

14. The trial court did not elaborate on the reasons for holding the applicant's entire trial *in camera* as opposed to certain parts of it. Neither did it take any measures to counterbalance the detrimental effect that the decision to hold the applicant's trial *in camera* must have had on public confidence in the proper administration of justice for the sake of protecting the State's interest in keeping its secrets (ibid., § 84). Lastly, there is nothing to indicate that the trial court considered any alternatives such as holding closed sessions involving the examination of the classified material but preferred to close the entire trial to the public. In sum, it has not been shown that holding the entire trial *in camera* corresponded to the test of strict necessity.

15. There has accordingly been a violation of Article 6 § 1 of the Convention.

REMAINING COMPLAINTS

16. The applicant also complained of the use of allegedly illegible handwritten statements in evidence against him and the restriction of his telephone calls while he was in pre-trial detention.

17. However, in the light of all the material in its possession, and in so far as the matters complained of are 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 the Protocols thereto.

Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant did not make any claims in respect of pecuniary damage. He left the amount of the award in respect of non-pecuniary damage to the Court's discretion. He claimed 8,500 euros (EUR) in respect of costs and expenses.

19. The Government contested those claims.

20. The Court awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

21. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses for lack of adequate supporting documentation.

22. The Court further 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 complaint concerning the lack of a public hearing admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of a public hearing;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,600 (three thousand six hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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 21 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Jolien Schukking President