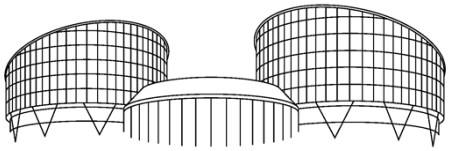

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF AFITSERYAN v. ARMENIA

(Application no. 28597/14)

JUDGMENT

STRASBOURG

21 June 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Afitseryan 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. 28597/14) 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 26 March 2014 by an Armenian national, Mr Kamo Afitseryan, born in 1972 and living in Vanadzor ("the applicant") who was represented by Mr K. Tumanyan, a lawyer practising in Vanadzor;

the decision to give notice of the application to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters;

the parties' observations;

Having deliberated in private on 31 May 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the lawfulness of two periods of the applicant's detention: (a) the period between 3 and 20 December 2013, and (b) the period during trial from 20 December 2013 until his conviction on 19 January 2015. It raises issues under Article 5 § 1 of the Convention.

2. The applicant was an accused in a criminal case. In April 2013 the Lori Regional Court ordered and later extended the applicant's detention until October 2013. On 22 October 2013 the Regional Court extended his detention by another month, until 25 November 2013. No appeals were lodged against that decision. On 29 October 2013 the applicant applied for bail which was allowed by the Regional Court on 7 November 2013. On 8 November 2013 the applicant was released on bail. On 25 November 2013 the Criminal Court of Appeal quashed the decision of 7 November 2013 upon the prosecutor's appeal and endorsed the decision of 22 October 2013. On 3 December 2013 the applicant was placed in detention as a result of that decision. In the meantime, the investigation into the his criminal case was completed and the case was transferred to the Regional Court for trial. On 18 December 2013 the Court of Appeal informed the applicant, in reply to a request for clarification of its decision, that the ruling of 22 October 2013 had extended his detention until 25 November 2013. Since he had been released from detention on 8 November 2013, he had to stay in detention for a period

equivalent to the unserved part of the detention period fixed by the decision of 22 October 2013 (17 days).

3. On 20 December 2013 the Regional Court set the case down for trial, stating in its decision that the applicant's detention was "to remain unchanged" since the reasons for it had not ceased to exist. The applicant lodged an appeal against that decision, which was left unexamined by the Court of Appeal on 29 January 2014 on the grounds that the decision was not amenable to appeal under domestic law. On 19 January 2015 the Regional Court found the applicant guilty as charged.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

A. Exhaustion of domestic remedies

4. The Government claimed that the applicant had failed to exhaust the domestic remedies in respect of both periods of detention, arguing that his appeals on points of law against the Court of Appeal's decisions of 25 November 2013 and 29 January 2014 had been deficient. The Court notes, however, that it has already found that an appeal on points of law is not an effective remedy in detention cases (see *Vardan Martirosyan v. Armenia*, no. 13610/12, § 41, 15 June 2021, with further references). No new elements have been adduced in the present case to depart from that finding. The Government's objection must therefore be dismissed.

B. The period between 3 and 20 December 2013

5. 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.

6. The general principles concerning Article 5 § 1 have been summarised in *Denis and Irvine v. Belgium* ([GC], nos. 62819/17 and 63921/17, §§ 123-33, 1 June 2021).

7. The Court notes that the applicant was released on bail by the Regional Court on 8 November 2013. However, on 25 November 2013 the Court of Appeal quashed that decision and endorsed an earlier decision of the Regional Court, taken on 22 October 2013, whereby the applicant's detention had been extended until 25 November 2013. The applicant stayed in detention on the basis of the Court of Appeal's decision from 3 to 20 December, when a new decision regarding his detention was taken by the trial court. The Court of Appeal justified the lawfulness of that period of detention by the fact that the applicant, having been released on 8 November 2013, had not served 17 days

of detention (between 8 and 25 November 2013) as ordered by the decision of 22 October 2013 (see paragraph 2 above).

8. The Court observes, firstly, that the Government failed to adduce any domestic provision which authorised the Court of Appeal to endorse a decision of the first-instance court extending detention, which, moreover, had not been previously contested, when examining an appeal against the first-instance court's decision allowing bail. Indeed, domestic law did not envisage such a possibility. Thus, the applicant's detention between 3 and 20 December was neither ordered in compliance with domestic law, nor based on a valid court order as required by domestic law.

9. Secondly, even assuming that the Court of Appeal had such an authority, the decision of 22 October 2013 explicitly authorised the applicant's detention only until 25 November. Thus, it could not be regarded as a valid basis for the applicant's detention during a later period, namely between 3 and 20 December 2013. The Court of Appeal justified its decision with the fact that 17 days of the one-month detention imposed by the Regional Court's decision of 22 October 2013 had remained "unserved" by the applicant due to his release on bail on 8 November 2013. However, not only was such justification not based on any domestic provision, the approach and the formulations used by the Court of Appeal give the impression that it viewed detention not as a preventive measure but as something akin to a penalty which the applicant was to "serve", which, in the Court's opinion, negated the very essence of the right to liberty. It follows that that period of detention was not in compliance with domestic law, was not based on a valid court decision and was arbitrary.

10. There has accordingly been a violation of Article 5 § 1 of the Convention as regards the period between 3 and 20 December 2013.

C. The period from 20 December 2013 to 19 January 2015

11. The applicant also complained under Article 5 § 1 of the Convention about the period of his detention during trial. The Court notes that this complaint is covered by its well-established case-law.

12. The Government argued, with reference to the case of *Martirosyan v. Armenia* (no. 23341/06, §§ 44-49, 5 February 2013), that the applicant had failed to exhaust the domestic remedies by not lodging any applications for release in the course of his detention during trial. However, the present case, as opposed to the case of *Martirosyan* which concerned the length of the applicant's detention, concerns the lawfulness of a specific period of the applicant's detention as authorised by the Regional Court's decision of 20 December 2013, which provided the legal basis for the applicant's continued detention during that entire period and was not amenable to appeal (see paragraph 3 above). Thus, there were no domestic remedies to exhaust against that decision and the Government's objection must be dismissed.

13. 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. Having examined all the material before it, the Court concludes that it discloses a violation of Article 5 § 1 of the Convention in the light of its findings in the judgment of *Vardan Martirosyan* (cited above, §§ 46-50).

14. There has accordingly been a violation of Article 5 § 1 of the Convention as regards the period from 20 December 2013 to 19 January 2015.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicant claimed 1,400 euros (EUR) in respect of pecuniary damage, EUR 21,000 in respect of non-pecuniary damage and 1,200,000 Armenian drams in respect of costs and expenses incurred before the Court.

16. The Government claimed that the applicant's pecuniary claims were unsubstantiated, while his non-pecuniary claims were exaggerated. He also failed to submit sufficient information about the work done by his lawyer, namely the number of hours and the hourly rate.

17. The Court notes that the applicant has failed to substantiate his claim for pecuniary damage with any evidence; it therefore rejects this claim. However, it awards the applicant EUR 6,600 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

18. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,500 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention between 3 and 20 December 2013;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention from 20 December 2013 to 19 January 2015;

4. *Holds*

   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 6,600 (six thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 21 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Jolien Schukking President