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

FOURTH SECTION

DECISION

Application no. 20409/11
Armen MATEVOSYAN
against Armenia

The European Court of Human Rights (Fourth Section), sitting on 13 April 2021 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 above application lodged on 23 March 2011,

Having regard to the decision to give notice to the Armenian Government ("the Government") of the complaints concerning the manner in which the sentence imposed on the applicant by the Russian courts was adapted by Armenian courts following his transfer to Armenia to serve the remainder of his sentence and to declare inadmissible the remainder of the application,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Armen Matevosyan, is an Armenian national who was born in 1978 and was serving his sentence in Vanadzor penitentiary facility at the time when he lodged the present application. He was represented before the Court by Mr G. Simonyan, a lawyer practising in Yerevan.

2. The Government were represented by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 19 September 2005 the applicant was convicted of the murder of three persons, wilful infliction of bodily harm and breach of inviolability of a dwelling by Krasnodar District Court in Russia. He was sentenced to twenty years' imprisonment under Article 105 § 2 (a) and (c) of the Criminal Code of Russia (murder of two or more persons and murder of a person in a vulnerable state) and to corrective community service for six months with confiscation of 20% of his salary for each of the offences under Articles 115 § 1 (wilful infliction of bodily harm) and 139 § 1 (breach of inviolability of a dwelling) of the same code. As a result, a cumulative sentence of twenty years and four months' imprisonment was imposed on the applicant.

5. On an unspecified date the Minister of Justice of Armenia and the Prosecutor General of Russia reached an agreement on the applicant's transfer to Armenia to serve the remainder of his sentence.

6. On 9 September 2008 the Chelyabinsk Regional Court ordered the applicant's transfer to Armenia for that purpose.

7. On 6 March 2009 the Prosecutor General of Armenia applied to the Erebuni and Nubarashen District Court of Yerevan ("the District Court") requesting it to recognise the judgment of 19 September 2005 and adapt the applicant's sentence to the Criminal Code of Armenia, in accordance with the requirements of Article 12 of the Moscow Convention on the Transfer of Sentenced Persons for Enforcement of Custodial Sentences ("the Moscow Convention").

8. On 15 May 2009 the District Court granted the Prosecutor's application. In doing so, it found that the offences under Articles 105 § 2 (a) and (c), 115 § 1 and 139 § 1 of the Criminal Code of Russia corresponded respectively to the offences envisaged by Articles 104 § 2 (1) (murder of two or more persons), 117 (infliction of bodily harm) and 147 § 1 (breaching inviolability of a dwelling) of the Criminal Code of Armenia. With reference to Articles 499.8 § 3 (3) and 499.9 § 1 of the Code of Criminal Procedure, the District Court decided to leave the sentence imposed by the judgment of 19 September 2005, as well as the starting date for serving the punishment, 30 May 2005, unchanged.

9. The applicant appealed against that decision. He argued that maintaining his original sentence of twenty years and four months' imprisonment was unlawful under Armenian law, as it exceeded the maximum sentence prescribed by Article 104 § 2 (1) of the Criminal Code of Armenia.

10. On 29 June 2009 the Criminal Court of Appeal ("the Court of Appeal") quashed the decision of 15 May 2009 and amended it. It found that the District Court had failed properly to recognise and enforce the Krasnodar District Court's judgment of 19 September 2005. In its opinion the District Court had breached Article 12 of the Moscow Convention, according to which the adapted custodial sentence could not exceed the

maximum punishment prescribed by the law of the administering state, that is fifteen years under Armenian law. Having applied the rules of cumulative sentencing set out in Article 66 § 4 of the Criminal Code of Armenia, the Court of Appeal adapted the applicant's sentence in the following manner: fifteen years' imprisonment for the offence under Article 104 § 2 (1), and fines for the offences under Articles 117 (infliction of bodily harm) and 147 § 1 (breaching inviolability of a dwelling) of the same code.

11. The prosecution lodged an appeal on points of law arguing, *inter alia*, that the sentence of fifteen years' imprisonment was unlawful, as Article 104 § 2 (1) of the Criminal Code of Armenia also provided for a possibility to impose life imprisonment.

12. On 26 November 2009 the Court of Cassation quashed the Court of Appeal's decision of 29 June 2009 and remitted the case for a fresh examination. It stated, *inter alia*, that the District Court had to determine the applicable principles of international law, notably whether or not the reduction of the applicant's sentence imposed on him by the Russian court would be in line with Armenia's international legal obligations. The Court of Cassation stated that it should also be determined whether the 1983 Convention on the Transfer of Sentenced Persons ("the Strasbourg Convention") was applicable and the legal effect of the bilateral agreement between the Armenian and Russian authorities on the applicant's transfer.

13. On 21 May 2010 the District Court pronounced its decision according to which the applicant's sentence under Articles 115 § 1 and 139 § 1 of the Russian Criminal Code, which corresponded respectively to Articles 117 and 147 § 1 of the Criminal Code of Armenia, should remain the same, that is corrective community service for six months with confiscation of 20% of his salary. As for the offence under Article 105 § 2 (a) and (c) of the Criminal Code of Russia, which the District Court adapted to Article 104 § 2 (1) of the Criminal Code of Armenia, it noted that in cases of murder Armenian law prescribed a maximum punishment of fifteen years' imprisonment or life imprisonment. With reference to Article 10 of the Strasbourg Convention the District Court noted that the administering state could neither aggravate, by nature or duration, the punishment imposed in the sentencing state, nor exceed the maximum punishment prescribed under the law of the administering state. Even though the Krasnodar District Court had the possibility under Russian law to impose on the applicant life imprisonment, it had chosen to sentence him to imprisonment for a certain period of time. Therefore, in the District Court's opinion Armenia, as the administering state, was not competent to change the type of the punishment and impose on the applicant life imprisonment. Thus the applicant's punishment under Article 104 § 2 (1) of the Criminal Code of Armenia had to be fixed at fifteen years' imprisonment. Applying the rules of cumulative sentencing set out in Article 66 § 4 of the Criminal Code of Armenia, the

District Court set the applicant's final sentence at fifteen years' imprisonment.

14. The decision of 21 May 2010 stated that it was subject to appeal within ten days of its pronouncement.

15. On 22 June 2010 the prosecution appealed against that decision arguing, *inter alia*, that the imposition of a fifteen-year sentence by the District Court had been in breach of the requirements of Article 10 of the Strasbourg Convention.

16. On 28 June 2010 the applicant made written submissions to the Court of Appeal arguing, *inter alia*, that the appeal against the decision of 21 May 2010 had been lodged out of time.

17. On 21 July 2010 the Court of Appeal quashed and amended the decision of 21 May 2010 and, applying the rules of cumulative sentencing, set the applicant's final sentence at twenty years' imprisonment. In doing so, it concluded that imposing twenty years' imprisonment on the applicant was in line with both domestic law and international treaties ratified by Armenia. The relevant part of its decision read as follows:

> "[The District Court] ... imposed a final sentence of fifteen years' imprisonment, whereas Article 104 § 2 of the Criminal Code [of Armenia] also envisages life sentence, which means that maintaining the convict's twenty years' imprisonment imposed by the Krasnodar Regional Court does not in any way deteriorate his situation, and, additionally, such is the requirement of justice. Therefore, the appellate court finds that ... decreasing the term of imprisonment for five years was in breach of the principles set out in ... the Code of Criminal Procedure [of Armenia], while the contested judicial act violated the very essence of justice and the necessity to maintain balance between constitutionally protected interests.
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> Thus, according to Article 10 of [the Strasbourg Convention] in the case of continuous enforcement the administering State is bound by the legal nature and duration of the sentence determined by the sentencing State."

18. The Court of Appeal did not address the applicant's submissions of 28 June 2010.

19. The applicant lodged an appeal on points of law arguing, in particular, that the Court of Appeal had erred in comparing imprisonment for a fixed term with imprisonment for life since, both under Russian and Armenian criminal law, those were two distinct types of punishment. He also submitted that the Court of Appeal had not addressed his arguments concerning the failure by the prosecution to respect the procedural time-limits for lodging an appeal against the decision of 21 May 2010.

20. On 17 September 2010 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit. That decision was served on the applicant on 24 September 2010.

RELEVANT LEGAL FRAMEWORK

A. Relevant domestic law

1. Code of Criminal Procedure of Armenia (as in force at the material time)

21. Article 499.8 § 3 (3) provides that first instance courts of Armenia, pursuant to their territorial jurisdiction, are competent to recognise judgments rendered by first instance courts of foreign States.

22. Article 499.9 § 1 provides that when deciding on the recognition of judgments of foreign States the competent courts of Armenia verify whether the requirements of relevant international treaties have been respected. Judgments of foreign States are subject to recognition and enforcement if those requirements have been respected, as well as in the case of absence of grounds for refusal of recognition and enforcement provided by the given international treaty.

2. Criminal Code of Armenia (as in force at the material time)

23. According to Article 49, which lists all types of criminal sanctions, imprisonment for certain periods of time and life imprisonment are listed as distinct types of punishment.

24. According to Article 66 § 4, in cases of cumulative sentencing, the term of imprisonment cannot exceed fifteen years.

25. According to Article 104 § 2 (1), murder of two or more persons shall be punishable by eight to fifteen years' imprisonment or by life imprisonment.

26. According to Article 117, infliction of light bodily harm shall be punishable by a fine or by detention for up to two months.

27. According to Article 147 § 1, entry to a dwelling against the will of a person shall be punishable by a fine or by detention for up to two months.

3. Criminal Code of Russia (as in force at the material time)

28. According to Article 105 § 2 (a) and (c), murder of two or more persons, as well as murder of a person, who is apparently in a vulnerable state, shall be punishable by eight to twenty years' imprisonment or by life imprisonment or by the death penalty.

B. Relevant international law

1. *The Council of Europe Convention on the Transfer of Sentenced Persons (signed in Strasbourg on 21 March 1983)*

29. The relevant provisions of the Council of Europe Convention on the Transfer of Sentenced Persons state the following:

> **"Article 10 – Continued enforcement**
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> 1. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.
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> 2. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.
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> **Article 11 – Conversion of sentence**
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> 1. In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority:
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> a. shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State;
>
> b. may not convert a sanction involving deprivation of liberty to a pecuniary sanction;
>
> c. shall deduct the full period of deprivation of liberty served by the sentenced person; and
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> d. shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.
>
> ..."

2. *Convention on the Transfer of Sentenced Persons for Enforcement of Custodial Sentences (signed in Moscow on 6 March 1998 by Armenia and other Member States of the Commonwealth of Independent States)*

30. Under Article 12 of this Convention, the administering state shall ensure continuation of enforcement of the sentence in accordance with its law and shall refrain from worsening the situation of the convict. According to the same provision, if the maximum custodial sentence is more lenient under the law of the administering state than the sentence prescribed by the judgment, then the court assigns the maximum custodial sentence under the law of the administering state.

COMPLAINTS

31. The applicant complained under Article 7 of the Convention that his sentence of twenty years' imprisonment imposed by the decision of the Criminal Court of Appeal of 21 July 2010 was in breach of the maximum punishment under Armenian law for the offences of which he had been convicted in Russia.

32. He also complained, under Article 6 of the Convention and Article 4 of Protocol No. 7, that the District Court's decision of 21 May 2010 was quashed on the basis of the prosecution's out-of-time appeal as a result of which the principle of *ne bis in idem* was violated in his case.

THE LAW

33. The applicant complained that the overall prison sentence of twenty years imposed by the decision of the Criminal Court of Appeal of 21 July 2010 was in breach of Article 7 of the Convention, the relevant part of which provides:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

34. The applicant further complained that the quashing of the District Court's decision of 21 May 2010 and the imposition of a twenty-year sentence by the Criminal Court of Appeal in its decision of 21 July 2010 was in breach of the principles of legal certainty and *ne bis in idem*. He relied on Article 6 of the Convention and Article 4 of Protocol No. 7, the relevant parts of which provide as follows:

Article 6

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 4 of Protocol No. 7

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
>
> ..."

35. As regards the applicant's first complaint, the Government contended that Article 7 did not apply. They argued that the decisions of the Armenian courts within the proceedings concerning the recognition and enforcement of the Krasnodar District Court's judgment could not be regarded as a "penalty" within the meaning of Article 7. The decisions of the Armenian courts did not follow the applicant's conviction but merely

related to the enforcement of a penalty already imposed by the Russian court. The proceedings in Armenia concerned continued enforcement of the foreign court's judgment and not conversion of the applicant's sentence imposed by it.

36. The applicant did not make any submissions in this connection.

37. The Court reiterates that the concept of "penalty" in Article 7 is, like the notions of "civil right and obligations" and "criminal charge" in Article 6 § 1 of the Convention, autonomous in scope. The wording of Article 7 § 1, second sentence, indicates that the starting point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a "criminal offence". Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity (see *Welch v. the United Kingdom*, 9 February 1995, §§ 27-28, Series A no. 307-A; *Del Río Prada v. Spain* [GC], no. 42750/09, §§ 81-82).

38. In the Court's established case-law a distinction is drawn between a measure that constitutes in substance a "penalty" and a measure that concerns the "execution" or "enforcement" of a "penalty"; Article 7 applies only to the former (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 142, ECHR 2008; *Del Río Prada*, cited above, § 83, and the references contained therein). However, the Court has also acknowledged that in practice the distinction between a measure that constitutes a "penalty" and a measure that concerns the "execution" or "enforcement" of the "penalty" may not always be clear-cut (see *Kafkaris*, § 142; *Del Río Prada*, § 85, both cited above).

39. In the present context, the Court has already held, where the respondent was the sentencing State, that Article 7 of the Convention did not apply to transfer decisions in the sentencing State (see, for instance, *Csoszánszki v. Sweden* (dec.), no. 22318/02, 27 June 2006 and *Szabó v. Sweden* (dec.), no. 28578/03, 27 June 2006). Similarly, where the applicant directed his complaints against the administering State, the Court has held that the transfer decisions taken by the authorities of the State to which the applicant has been transferred to serve his sentence did not amount to a "penalty" within the meaning of Article 7 (see *Ciok v. Poland* (dec.), no. 498/10, 23 October 2012 and *Müller v. Czech Republic* (dec.), no. 48058/09, 6 September 2011).

40. Turning to the present case, the Court observes that the applicant was tried and convicted, in Russia, to a total of twenty years and four months' imprisonment (see paragraph 4 above). The Armenian courts only validated his conviction by the Russian court and decided that the sentence could be enforced in Armenia. That is, in accordance with the procedure set out in Article 10 of the Strasbourg Convention for continued enforcement, Armenian courts, being bound by the legal nature and duration of the

sentence as determined by the court of the sentencing State, adapted the applicant's sanction to the punishment prescribed by Armenian law for similar offences. Notably, the penalty imposed on the applicant by the Russian court was neither modified nor aggravated as a result of the legal qualification of the relevant offences under Armenian law. The penalty itself remained the same – that is imprisonment for a set term. What is more, as a result of the application of the sentencing rules under Armenian law, the applicant's sentence was reduced by four months (see paragraph 17 above).

41. In the light of its case-law, the Court concludes that the Armenian courts' decisions concerning the recognition and enforcement of the Russian court's judgment concerned the enforcement of the applicant's sentence imposed on him in Russia and could not therefore be considered as amounting to a "penalty" within the meaning of Article 7 of the Convention. Therefore Article 7 is not applicable in the present case.

42. As regards the applicant's complaint under Article 6 of the Convention that the Criminal Court of Appeal quashed the District Court's decision of 21 May 2010 on the basis of an appeal lodged by the prosecution in breach of the domestic time-limits, the Court reiterates that Article 6 of the Convention does not apply to proceedings relating to the execution of a sentence (see *Montcornet de Caumont v. France* (dec.), no. 59290/00, 13 May 2003). The Court has confirmed this position also in the specific context of transfer proceedings (see *Szabó*, cited above). Having regard to its above finding with regard to the applicability of Article 7 to the proceedings before the Armenian courts concerning the recognition and enforcement of the applicant's sentence imposed by the Russian court, the Court concludes that those proceedings fall outside the criminal limb of Article 6.

43. Lastly, the applicant complained under Article 4 of Protocol No. 7 that the principle of *ne bis in idem* was violated in his case on the grounds that the Court of Appeal quashed the District Court's decision of 21 May 2010 which had already become final. The Court notes that the aim of Article 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings that have been concluded by a final decision (see, among other authorities, *Gradinger v. Austria*, 23 October 1995, § 53, Series A no. 328-C). The Court further notes that the repetitive aspect of trial or punishment is central to the legal problem addressed by Article 4 of Protocol No. 7 (see *Nikitin v. Russia*, no. 50178/99, § 35, ECHR 2004-VIII). In view of its above finding that the proceedings before the Armenian courts did not involve the determination of a "criminal charge" against the applicant within the meaning of Article 6 of the Convention, the Court finds that consequently Article 4 of Protocol No. 7 does not apply to the case (see, *mutatis mutandis*, *Seražin v. Croatia* (dec.), no. 19120/15, § 91, 9 October 2018).

44. Accordingly, the complaints raised in the present case are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 20 May 2021.

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Ilse Freiwirth
Deputy Registrar

Jolien Schukking
President