



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

FOURTH SECTION

**CASE OF HAMAZASPYAN AND SAFARYAN v. ARMENIA**

*(Applications nos. 28506/15 and 6728/17)*

JUDGMENT

STRASBOURG

9 February 2023

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



**In the case of Hamazaspyan and Safaryan v. Armenia,**

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

Anja Seibert-Fohr, *President*,

Armen Harutyunyan,

Ana Maria Guerra Martins, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 19 January 2023,

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

## PROCEDURE

1. The case originated in applications against Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The Armenian Government (“the Government”) were given notice of the applications.

## THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the unlawful detention. They also raised other complaints under the provisions of the Convention.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

### II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

6. The applicants complained of the unlawful detention (for further details see appended table). They relied, expressly or in substance, on Article 5 § 1 of the Convention.

7. The Court reiterates that, in order to comply with Article 5 § 1 of the Convention, the detention in issue must take place “in accordance with a procedure prescribed by law” and be “lawful”. The Convention here refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the aim of Article 5,

namely to protect the individual from arbitrariness (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 47, ECHR 2003-IV; *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; and *Vasenin v. Russia*, no. 48023/06, § 108, 21 June 2016). The absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time may be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1 (see *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002; *Nakhmanovich v. Russia*, no. 55669/00, § 70, 2 March 2006; and *Yeloyev v. Ukraine*, no. 17283/02, § 54, 6 November 2008).

8. In the leading case of *Vardan Martirosyan v. Armenia* (no. 13610/12, 15 June 2021), the Court already found a violation in respect of issues similar to those in the present case.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the decisions of the domestic courts, as set out in the appended table, did not afford the applicants adequate protection from arbitrariness which is an essential element of the lawfulness of detention within the meaning of Article 5 § 1 of the Convention, and that, therefore, the applicants' detention, as specified in the appended table, failed to comply with the requirements of Article 5 § 1 of the Convention.

10. These complaints are therefore admissible and disclose a breach of Article 5 § 1 of the Convention.

### III. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

11. The applicants submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it and the arguments of the parties, the Court concludes that they also disclose violations of the Convention in the light of its findings *Buzadji v. the Republic of Moldova* [GC] (no. 23755/07, §§ 84 et seq., 5 July 2016), and *Ara Harutyunyan v. Armenia* (no. 629/11, §§ 48 et seq., 20 October 2016).

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. 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.”

13. Regard being had to the documents in its possession and to its case-law (see, in particular, *Vardan Martirosyan*, cited above), the Court considers it reasonable to award the sums indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that these applications disclose a breach of Article 5 § 1 of the Convention concerning the unlawful detention;
4. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);
5. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
  - (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.

Done in English, and notified in writing on 9 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina  
Acting Deputy Registrar

Anja Seibert-Fohr  
President

APPENDIX

List of applications raising complaints under Article 5 § 1 of the Convention  
(unlawful detention)

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Period of unlawful detention	Court which issued detention order	Specific defects	Other complaints under well-established case-law	Amount awarded for non-pecuniary damage per applicant (in euros) <sup>1</sup>	Amount awarded for costs and expenses per application (in euros) <sup>2</sup>
1.	28506/15 29/05/2015	<b>Armen HAMAZASPYAN</b> 1974	Alumyan Hayk Yerevan	21/11/2014 - 31/10/2017	05/12/2014 - 31/10/2017	Ajapnyak and Davtashen District Court of Yerevan	decision on detention without a time-limit	Art. 5 (3) - lack of relevant and sufficient reasons for detention; excessive length of pre-trial detention	4,000	250
2.	6728/17 02/12/2016	<b>Gevorg SAFARYAN</b> 1985	Hayrapetyan Tigran Yerevan	01/01/2016 - 16/01/2017	10/05/2016 - 16/01/2017	Kentron and Nork-Marash District Court of Yerevan	decision on detention without a time-limit	Art. 5 (3) - lack of relevant and sufficient reasons for detention	4,000	250

<sup>1</sup> Plus any tax that may be chargeable to the applicants.

<sup>2</sup> Plus any tax that may be chargeable to the applicants.