



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

FOURTH SECTION

CASE OF BUDAGHYAN AND CHUGASZIAN v. ARMENIA

(Applications nos. 56589/15 and 56596/15 – see appended list)

JUDGMENT

STRASBOURG

23 June 2022

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

In the case of Budaghyan and Chugaszyan 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 Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 2 June 2022,

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 lack of relevant and sufficient reasons for detention.

THE LAW

JOINDER OF THE APPLICATIONS

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

ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

6. The applicants complained of the lack of relevant and sufficient reasons for detention. They relied, expressly or in substance, on Article 5 § 3 of the Convention, which reads as follows:

Article 5 § 3

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

7. The Government submitted that the applicants had failed to exhaust the available domestic remedies, arguing that they could have lodged an application with the domestic courts seeking an acknowledgement of a violation of their right to liberty and obtained compensation based on the provisions of the Civil Code in force from 1 January 2016 concerning the right to claim compensation from the State for non-pecuniary damage (see *Shirkhanyan v. Armenia*, no. 54547/16, §§ 103-06, 22 February 2022).

8. The Court notes at the outset that the applicants lodged appeals against their detention decisions in which they complained about the lack of relevant and sufficient reasons for their continued detention, all of which were dismissed by the appeal court. As to the Government's argument that the applicants should have later instituted separate proceedings under the new provisions of the Civil Code, the Court observes that, even assuming that this remedy was sufficiently clear and certain in theory as required by Article 35 § 1 of the Convention, the Government have failed to provide any relevant evidence demonstrating the effectiveness of this remedy in practice in respect of the applicants' particular complaints. There are therefore no grounds to accept the Government's objection as to non-exhaustion of domestic remedies.

9. The Court reiterates that according to its established case-law under Article 5 § 3 of the Convention, the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings. The Court has also held that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures for ensuring this person's appearance at trial. The requirement for the judicial officer to give "relevant" and "sufficient" reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest (see, among other authorities, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87 and 102, 5 July 2016).

10. In the leading case of *Ara Harutyunyan v. Armenia* (no. 629/11, §§ 48 et seq., 20 October 2016), the Court already found a violation in respect of issues similar to those in the present case.

11. 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

domestic courts failed to provide relevant and sufficient reasons for the applicants' pre-trial detention.

12. These complaints are therefore admissible and disclose a breach of Article 5 § 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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.”

14. Regard being had to the documents in its possession and its case-law (see, in particular, *Ara Harutyunyan*, cited above, § 66), the Court considers it reasonable to award the sums indicated in the appended table.

15. 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. *Decides* to join the applications;
2. *Declares* the complaints under Article 5 § 3 admissible;
3. *Holds* that these complaints disclose a breach of Article 5 § 3 of the Convention concerning the lack of relevant and sufficient reasons for detention;
4. *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.

BUDAGHYAN AND CHUGASZIAN v. ARMENIA JUDGMENT

Done in English, and notified in writing on 23 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina
Acting Deputy Registrar

Jolien Schukking
President

BUDAGHYAN AND CHUGASZYAN v. ARMENIA JUDGMENT

APPENDIX

List of applications raising complaints under Article 5 § 3 of the Convention
(lack of relevant and sufficient reasons for detention)

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Court which issued detention order/ examined appeal	Specific defects	Amount awarded for non-pecuniary damage per applicant (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
1.	56589/15 04/11/2015	Ara BUDAGHYAN 1975	Hayk Alumyan Yerevan	03/07/2015 - 10/06/2016	Kentron and Nork-Marash District Court of Yerevan Criminal Court of Appeal	fragility of the reasons employed by the courts	2,000	250
2.	56596/15 21/10/2015	Garegin CHUGASZYAN 1961	Tigran Yegoryan Yerevan	07/04/2015 - 04/05/2015	Kentron and Nork-Marash District Court of Yerevan Criminal Court of Appeal	fragility of the reasons employed by the courts	2,000	250

¹ Plus any tax that may be chargeable to the applicants.

² Plus any tax that may be chargeable to the applicants.