



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

FOURTH SECTION

CASE OF MKHITARYAN AND OTHERS v. ARMENIA

*(Application no. 4693/12 and 3 others –
see appended list)*

JUDGMENT

STRASBOURG

23 June 2022

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

In the case of Mkhitaryan and Others 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 unlawful detention. Some applicants 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, which reads as follows:

Article 5 § 1

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;”

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 *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II; *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 47, ECHR 2003-IV; 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 cases.

9. Having examined all the material submitted to it and the arguments of the parties, including the Government’s objection related to the non-exhaustion of domestic remedies, 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. Some applicants submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). Having examined all the material submitted to it

and the arguments of the parties, the Court finds that 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, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Buzadji v. the Republic of Moldova* [GC] (no. 23755/07, §§ 84 et seq., 5 July 2016); *Ara Harutyunyan v. Armenia* (no. 629/11, §§ 48 et seq., 20 October 2016); and *Khodorkovskiy v. Russia* (no. 5829/04, § 235, 31 May 2011).

IV. REMAINING COMPLAINTS

12. In some applications the applicants also raised other complaints under various Articles of the Convention.

13. In particular, in application no. 45189/18 the applicant also complained under Article 5 § 3 of the Convention about the failure of the trial court to provide relevant and sufficient reasons for his detention when refusing his application for release on 16 March 2018. Having regard to its findings under Article 5 § 1 of the Convention and the period of the applicant's detention at issue, the Court considers that this complaint is admissible but that there is no need to give a separate ruling on it.

14. The applicants in applications nos. 4693/12 and 5728/17 also raised other complaints under Article 5 § 1 of the Convention.

15. The Court has examined these complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that these complaints must be rejected in accordance with Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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.”

17. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sums indicated in the appended table and rejects any additional claims for just satisfaction raised by the applicants in applications nos. 4693/12, 5728/17 and 45189/18. As concerns the applicant in application no. 39583/17, the Court makes no award

since he failed to submit his just satisfaction claims within the time-limit fixed, as required under Rule 60 of the Rules of Court.

18. 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 concerning the unlawful detention, as described in the appended table, the other complaints under well-established case-law of the Court, as set out in the appended table, and the complaint under Article 5 § 3 of the Convention raised in application no. 45189/18, admissible, and the remainder of the complaints under Article 5 § 1 of the Convention, raised by the applicants in applications nos. 4693/12 and 5728/17, inadmissible;
3. *Holds* that these complaints disclose a breach of Article 5 § 1 of the Convention concerning the unlawful detention, as laid down in the appended table;
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* that there is no need to examine separately the complaint under Article 5 § 3 of the Convention raised in application no. 45189/18;
6. *Holds*
 - (a) that the respondent State is to pay the applicants in applications nos. 4693/12, 5728/17 and 45189/18, 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.
7. *Dismisses* the remainder of the applicants' claims for just satisfaction in applications nos. 4693/12, 5728/17 and 45189/18.

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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

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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 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) ¹ | Amount awarded for costs and expenses per application ² (in euros) ² |
|-----|--|--------------------------------------|---------------------------------------|------------------------------------|---|--|---|--|---|
| 1. | 4693/12 14/01/2012 | Sergey MKHITARYAN 1991 | Simonyan Liparit Yerevan | 26/04/2011 - 13/04/2012 | Shirak Regional Court on 26/04/2011 | absence of any grounds given by the court in the decision authorising detention, decision on detention without a time-limit | | 6,000 | none |
| 2. | 5728/17 21/11/2016 | Artur VARDANYAN 1981 | Aghvanyan Sirush Yerevan | 24/11/2016 - 13/09/2019 | Kentron and Nork- Marash District Court of Yerevan on 24/11/2016 | absence of any grounds given by the court in the decision authorising detention, decision on detention without a time-limit | Art. 5 (3) - lack of relevant and sufficient reasons for detention - 25/11/2015 - 24/11/2016 (see <i>Buzadji v. the Republic of Moldova</i> [GC], no. 23755/07, §§ 84 et seq., 5 July 2016, and <i>Ara Harutyunyan v. Armenia</i> , no. 629/11, §§ 48 et seq., 20 October 2016) | 6,000 | 1,500 |

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

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

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| No. | Application no. Date of introduction | Applicant's name Year of birth | Representative's name and location | 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) ¹ | Amount awarded for costs and expenses per application (in euros) ² |
|-----|---|-----------------------------------|------------------------------------|---|---|---|--|---|---|
| | | | | | | | Art. 5 (4) - deficiencies in proceedings for review of the lawfulness of detention - right to be heard either in person or through some form of representation at the court session on 24/11/2016 (see <i>Khodorkovskiy v. Russia</i> , no. 5829/04, § 235, 31 May 2011) | | |
| 3. | 39583/17 23/05/2017 | Khachik AVETISYAN 1960 | Poghosyan Syuzanna Strasbourg | 24/11/2016 - the date of the applicant's conviction or release is unknown | Kentron and Nork Marash District Court of Yerevan on 24/11/2016 | absence of any grounds given by the court in the decision authorising detention, decision on detention without a time-limit | Art. 5 (4) - deficiencies in proceedings for review of the lawfulness of detention - right to be heard either in person or through some form of representation at the court session on 24/11/2016 (see <i>Khodorkovskiy v. Russia</i> , no. 5829/04, § 235, 31 May 2011) | none | none |

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| No. | Application no. Date of introduction | Applicant's name Year of birth | Representative's name and location | 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) ¹ | Amount awarded for costs and expenses per application (in euros) ² |
|-----|---|------------------------------------|------------------------------------|------------------------------|---|---|--|---|---|
| 4. | 45189/18 16/09/2018 | Harutyun SARIBEKYAN 1967 | Rshtuni Narine Yerevan | 24/11/2016 - 22/06/2018 | Kentron and Nork Marash District Court of Yerevan on 24/11/2016 | absence of any grounds given by the court in the decision authorising detention, decision on detention without a time-limit | | 6,000 | none |