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

FIFTH SECTION

DECISION

Application no. 76757/14
Aram MUGHALYAN
against Armenia

The European Court of Human Rights (Fifth Section), sitting on 19 December 2024 as a Committee composed of:

Andreas Zünd*, President*,
Armen Harutyunyan,
Mykola Gnatovskyy, *judges*,
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 76757/14) 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 28 November 2014 by an Armenian national, Mr Aram Mughalyan ("the applicant"), who was born in 1988, lives in Yerevan and was represented by Mr V. Gabrielyan, a lawyer practising in Yerevan;

the decision to give notice of the complaint under Article 6 of the Convention concerning the alleged breach of the applicant's right to a fair hearing to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged unfairness of the criminal proceedings against the applicant under Article 6 of the Convention.

2. Following several crime reports by a certain S.K. residing in a village to the effect that unknown person(s) had set his property on fire (bales of hay next to his house) on three different occasions between January and March

2013, criminal proceedings were instituted on account of intentional damage to property.

3. On a further such occasion on 29 March 2013, S.K.'s neighbour succeeded to note down the registration number of an unknown car which he had noticed leaving the site. The police identified the applicant as the owner of the car and he was summoned to the regional police station.

4. On 30 March 2013 the applicant gave a statement (*բացատրություն*, literally translates as "explanation") to the police saying that he and his three friends had burnt bales of hay with diesel fuel in the village for personal amusement as a thrilling activity. They did not know S.K. and had no relationship with him.

5. When questioned as a suspect in April 2013 the applicant refused to make any statements in relation to the events of January and March 2013 (see paragraph 2 above).

6. In April 2013 the applicant was charged with aggravated hooliganism. When questioned as an accused, he denied the charges against him stating that he had not wished to commit hooliganism, had not caused damage to property and had not violated public order by his actions.

7. By an indictment of 1 August 2013 the applicant was charged with aggravated hooliganism and attempted intentional destruction of property by arson, explosion or other publicly dangerous method (his friends were also charged). The indictment relied on, *inter alia*, S.K.'s crime reports (see paragraph 2 above), the record of the examination of the scene, the applicant's statement of 30 March 2013 (see paragraph 4 above), witness statements given by S.K. and neighbours, the record of the examination of the applicant's car (see paragraph 3 above) and forensic evidence (of, *inter alia*, the content of plastic bottles discovered in the applicant's car).

8. At the trial the applicant pleaded not guilty. The prosecution requested to read out the applicant's statement of 30 March 2013 (see paragraph 4 above), to which the applicant objected stating that he had given that statement "as a result of a threat by the investigator". It transpires from the transcript of the relevant court hearing that the trial court refused the prosecution's request. No specific reasons are cited in the transcript.

9. By a judgment of 15 October 2013 the applicant was found guilty as charged (see paragraph 7 above) and sentenced to two years and six months' imprisonment. He was exempted from serving the sentence by application of a general amnesty.

10. The applicant lodged an appeal. He requested, among other things, that the court exclude from the file certain evidence, such as the record of the examination of his car and the decision to admit into evidence the items discovered therein.

11. On 4 December 2013 the Criminal Court of Appeal ("the Court of Appeal") set the case down for examination. The relevant decision stated that it would examine the case in accordance with the rules applicable to

proceedings before the Court of Cassation. The same decision stated, *inter alia*, that any applications submitted in accordance with Articles 382 § 3 and 391 § 4 of the former Code of Criminal Procedure (in force until 1 July 2022 – see paragraph 18 below) would be examined according to the rules set out in that Code.

12. At the hearing of 5 March 2014 the prosecution requested the Court of Appeal to admit the applicant's statement of 30 March 2013 into evidence which the trial court had failed to do (see paragraph 8 above) without providing any reasons. The applicant objected stating that the given statement had not been relied on by the investigating authority previously to substantiate the charges against him.

13. At the same hearing the Court of Appeal decided to admit the applicant's statement of 30 March 2013 (see paragraph 4 above). It was then read out in full and the applicant was asked to make comments.

14. On 20 March 2014 the Court of Appeal upheld the applicant's conviction but changed his sentence imposing two year and four months' imprisonment and a fine of 50,000 Armenian drams also exempting him from serving the sentence by application of a general amnesty. The relevant decision referred to, *inter alia*, the applicant's statement of 30 March 2013 and stated that the arguments raised in, among others, the applicant's appeal could not serve as a basis for setting aside the trial court's judgment.

15. On 6 June 2014 the Court of Cassation refused to grant the applicant leave to appeal on points of law.

16. Relying on Article 6 § 1 of the Convention, the applicant complained that the examination of his appeal had not complied with the principles of adversarial proceedings and equality of arms.

THE COURT'S ASSESSMENT

17. The applicant contended that the Court of Appeal had not informed him in time about the applicable procedural rules. As a result, it granted the prosecution's request that his statement of 30 March 2013 be admitted into evidence, whereas his requests for exclusion of certain evidence relied on by the trial court had not been examined at all. He was therefore deprived of a reasonable opportunity to present his case under conditions that did not place him at a disadvantage *vis-à-vis* the prosecution.

18. The Government submitted that the admission of the applicant's statement of 30 March 2013 (see paragraphs 12 and 13 above) had been in compliance with Article 382 § 3 (which exceptionally allowed admission of new evidence by the Court of Appeal if a party substantiated that its request to the same effect had been unjustifiably refused by the trial court) and Article 391 § 4 (which allowed the Court of Appeal to examine evidence adduced before the trial court upon a party's request) of the former Code of Criminal Procedure. Those provisions had been referenced in the decision of

4 December 2013 (see paragraph 11 above). Accordingly, the applicant had been aware that the Court of Appeal would apply those provisions when examining his appeal.

19. The Court notes that the conditions in which the applicant made the impugned statement ("explanation" – see paragraph 4 above) on 30 March 2013 are not clear. However, the applicant did not complain before it that the Court of Appeal had admitted unlawfully-obtained evidence on which it had relied to uphold his conviction. Neither did he complain about the way in which his statement of 30 March 2013 was obtained (compare *Dominka v. Slovakia* (dec.), no. 14630/12, § 34, 3 April 2018). He rather complained that the manner in which the Court of Appeal admitted that statement into evidence was in breach of the principles of adversarial proceedings and equality of arms (see paragraphs 16 and 17 above). It will not therefore decide on matters that have not been "referred to" it, within the meaning of Article 32 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), but will rather proceed to examine the applicant's complaint having regard to the relevant principles on adversarial proceedings and equality of arms (see, for example, *Zahirović v. Croatia*, no. 58590/11, § 42, 25 April 2013, and *Bajić v. North Macedonia*, no. 2833/13, § 54, 10 June 2021, with further references).

20. In its decision of 4 December 2013 the Court of Appeal made reference to, *inter alia*, Article 382 § 3 of the former Code of Criminal Procedure, which exceptionally allowed admission of new evidence by the Court of Appeal if a party substantiated that its request to the same effect had been unjustifiably refused by the trial court (see paragraphs 11 and 18 above). At the hearing of 5 March 2014 the prosecution made such a request before the Court of Appeal. It is therefore not clear on what grounds the applicant claimed that the Court of Appeal had changed the chosen procedure without his knowledge.

21. In any event, the applicant was provided with an opportunity to object to the admission of the given statement by the Court of Appeal (see paragraph 12 above) and, after it had granted the prosecution's request and the statement at issue had been read out, he was given the opportunity to submit arguments in respect of his statement given before the police (see paragraph 13 above). The applicant's main objection to the admission of the impugned statement was that the investigating authority had not relied on it. The Court observes, however, that the indictment referred to the statement in question (see paragraph 7 above). Furthermore, since the impugned statement was the applicant's own account, no question arises in the present case as to whether the defence had knowledge of that evidence (contrast *Bajić*, cited above, § 57, and *Zahirović*, cited above, § 47).

22. In so far as the applicant claimed that, as opposed to the prosecution's request, his requests for exclusion of evidence were not examined by the Court of Appeal (see paragraph 17 above), there is nothing to suggest that he

had submitted before that court any requests other than those which the latter court dismissed in the decision of 20 March 2014 (see paragraph 14 above).

23. In view of the foregoing, the Court sees no reasons to find that the principle of equality of arms and the right to adversarial proceedings were not respected in the impugned proceedings.

24. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 January 2025.

Martina Keller Deputy Registrar	Andreas Zünd President