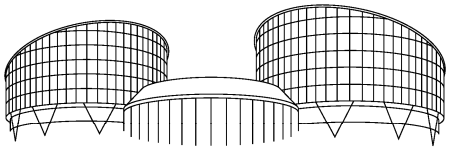

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 36588/13
Hakob TOSUNYAN
against Armenia

The European Court of Human Rights (First Section), sitting on 17 December 2019 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Armen Harutyunyan,
Pere Pastor Vilanova, *judges,*
and Abel Campos, *Section Registrar,*

Having regard to the above application lodged on 29 May 2013,

Having regard to the declaration submitted by the respondent Government on 15 March 2019 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Hakob Tosunyan, is an Armenian national, who was born in 1959 and lives in Kajaran, Armenia. He was represented before the Court by Mr T. Hayrapetyan, a lawyer practising in Yerevan.

The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

The applicant complained under Article 5 §§ 1 and 3 of the Convention that his detention between 18 September 2013 and 18 March 2016 had been arbitrary and unlawful, that his detention had not complied with the "reasonable time" requirement and that the domestic courts had failed to provide relevant and sufficient reasons for his detention.

The application had been communicated to the Government.

THE LAW

The applicant complained that his detention between 18 September 2013 and 18 March 2016 had been arbitrary and unlawful, that his detention had not complied with the "reasonable time" requirement and that the domestic courts had failed to provide relevant and sufficient reasons for his detention. He relied on Article 5 §§ 1 and 3 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 15 March 2019 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "I, Mr Yeghishe Kirakosyan, the Agent of the Government of Armenia before the European Court of Human Rights, hereby declare, that the Armenian Government acknowledge that the applicant's detention between 18 September 2013 and 18 March 2016 was not compatible with the requirements of Article 5 § 1 of the Convention. Moreover, the pre-trial detention did not comply with the "reasonable time" requirement and the requirement that the domestic courts provide "relevant and sufficient" reasons for it, enshrined in Article 5 § 3 of the Convention.
>
> The Government of the Republic of Armenia, acknowledging the violation of the applicant's rights, offer to pay to the applicant Hakob Tosunyan the amount of EUR 10,000 to cover any and all damage incurred by him.
>
> The above-mentioned sum will be free of any taxes that may be applicable and will be converted into Armenian drams at the rate applicable on the date of payment payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. In the event of failure to pay these sums within the said three-month period, the Government undertake to pay simple interest on them, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.
>
> Thereof, the Government, taking notice of criteria emerging from the Court's case-law as to when it is appropriate to decide to strike out the application with reference to Article 37 § 1 (c) on the basis of the unilateral declaration made by the Government, even if the applicant wishes the examination of the case to be continued, suggest that the present declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1(c) of the Convention, and invite the Court to strike the present case out of the list of cases."

The applicant did not respond to the Government's unilateral declaration.

The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

The Court has established in a number of cases, including those brought against Armenia, its practice concerning complaints about the violation of Article 5 §§ 1 and 3 of the Convention in similar situations (see, for example, *Yeloyev v. Ukraine*, no. 17283/02, §§ 52-55, 6 November 2008; *Kharchenko v. Ukraine*, no. 40107/02, §§ 73-76, 10 February 2011; *Muradkhanyan v. Armenia*, no. 12895/06, §§ 79-87, 5 June 2012; and *Ara Harutyunyan v. Armenia*, no. 629/11, §§ 30-37, 20 October 2016).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 5 §§ 1 and 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 16 January 2020.

Abel Campos Registrar	Krzysztof Wojtyczek President