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

FOURTH SECTION

DECISION

Application no. 5471/14
Zhuleta AMARIKYAN
against Armenia

The European Court of Human Rights (Fourth Section), sitting on 8 February 2022 as a Committee composed of:

Jolien Schukking, *President,*
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 5471/14) against Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 28 December 2013 by an Armenian national, Ms Zhuleta Amarikyan, born in 1960 and living in Yerevan ("the applicant") who was represented by Mr T. Hayrapetyan, a lawyer practising in Yerevan;

the decision to give notice of the complaints under Article 3 of the Convention concerning the alleged inadequate conditions of the applicant's detention at a psychiatric hospital, to the Armenian Government ("the Government"), represented by their former Agent, Mr G. Kostanyan, and subsequently by their current Agent, Mr Y. Kirakosyan, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant complains under Article 3 of the Convention about the conditions of her detention at Avan Psychiatric Hospital ("the hospital"). She is disabled and walks with a cane or a walker. She is allergic to honey and in 2012 was diagnosed with delusional disorder.

2. On 30 May 2013 the applicant was forcibly taken to the hospital for treatment, following a complaint by her brother – with whom she apparently had strained relations – about her alleged violent conduct the day before. The applicant was initially diagnosed with "severe delusional syndrome" and was considered dangerous. Upon a court order, she was placed in the hospital for compulsory inpatient treatment. On 28 June 2013 she was discharged subject to aftercare by a local psychiatrist.

3. The applicant alleged, in particular, that throughout her stay in the hospital, she had had to sleep on an unupholstered couch placed in the canteen, deprived of privacy and sleep due to the constant noise of other patients, and without any bedding, which the hospital refused to provide. As the food in the hospital had been of poor quality, she had been unable to eat anything for the first days of her detention and later, with the help of a nurse, she had had to buy some snacks outside the hospital since she had been repulsed by the monotone food of the hospital. Notably, for breakfast they had served a bun and some honey, to which she was allergic, and for lunch – a bland rice porridge, which she had refused since she had felt unwell after having tried it. No soap, towel, toothbrush or toothpaste had been provided and she had regularly had to ask the staff for toilet paper. She had not showered during her stay at the hospital and had had to clean her skin with a cloth, using cold water. The applicant also alleged, without explanation, that she had had no opportunity to change her clothes throughout her detention. Unlike other patients, no outdoor strolls had been allowed to her. Her communication with the outside world had been restricted and she had not been allowed to make calls from her mobile phone. The hospital staff had forced her to take medication without considering her allergy and upon her discharge she had allegedly been administered a forced injection of an unknown drug, as a result of which she had pain in her leg and back. Due to the poor conditions of the hospital, her health had declined and she had felt sore over her back and ribs.

4. On 6 June 2013 the monitoring mission of the Helsinki Citizens' Assembly-Vanadzor ("HCAV"), a human rights NGO, visited the hospital and interviewed the applicant. In particular, the HCAV report noted that although the patients usually received towel, soap and toilet paper, no toothpaste and toothbrush were provided. Furthermore, the patients were not provided each with their own bar of soap or roll of toilet paper and they had to ask the hospital staff for toilet paper. The food in the hospital was monotone and of poor quality, generally consisting of pasta or rice porridge which lacked an adequate amount of salt or oil. The breakfast consisted of a bun, butter, honey and juice; the quality of the bun and the juice were unsatisfactory both for the patients and the staff. The report also referred to the applicant's interview, during which she had raised similar allegations as in paragraph 3 above and that she had not showered because she had felt repulsed.

THE COURT'S ASSESSMENT

5. The Court notes that in her observations of 31 October 2017 the applicant complained that the hospital had failed to provide her with a bed fitted to her disability or assign her a nurse to help her shower. Also, without refuting the Government's submissions that there had been no formal restrictions on her outdoor activity, the applicant complained that, despite her disability, the authorities had failed to take any positive steps to ensure her participation therein. The Court considers, however, that these are new and distinct complaints under Article 3 of the Convention, which must comply with the admissibility requirements (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 135, 20 March 2018).

6. The applicant's detention ended on 28 June 2013, whereas she raised these complaints as late as in 2017. Even assuming that there were no effective remedies to exhaust, these complaints were lodged outside the six-month time-limit (see *Ulemek v. Croatia*, no. 21613/16, § 92, 31 October 2019) and must therefore be rejected pursuant to Article 35 § 4.

7. The Court further considers it unnecessary to address the Government's objection as to non-exhaustion of domestic remedies, since the application is in any event inadmissible for the reasons set out below.

8. The general principles concerning conditions of detention in psychiatric institutions by reference to Article 3 of the Convention were summarised in *Stanev v. Bulgaria* ([GC], no. 36760/06, §§ 201-06, ECHR 2012). Regarding the well-established standard of proof in conditions-of-detention cases the Court refers to the principles set out in *Muršić v. Croatia* ([GC], no. 7334/13, §§ 127-28, 20 October 2016).

9. The Court notes that the applicant's detention in allegedly inhuman and degrading conditions lasted a total of twenty-nine days.

10. It is common ground between the parties that, after her admission to the hospital, the applicant had slept on the couch of the canteen. Nonetheless, there is nothing to support her allegation that she had no other choice than to sleep on the couch during the whole period of her detention. In fact, according to a testimony of another patient submitted by the Government, which the applicant did not contest, she had herself refused sleeping arrangements in a shared ward and had done so only for a few days. As regards the reasons for her refusal – allegedly disgusting mattress, scary roommates, or unsuitable bed – the applicant never alleged those in her application, for which no evidence was submitted to the Court, such as statements by her roommates or by other persons who might possess relevant information (see *Muršić*, cited above, § 127, and *Sabeva v. Bulgaria*, no. 44290/07, § 41, 10 June 2010). Nor does the HCAV report (see paragraph 4 above) corroborate the applicant's allegations since it refers to her own allegations and not to the actual assessment of her conditions of detention. Lastly, given the parties contradictory submissions,

the Court is unable to establish, "beyond reasonable doubt", that no bedding was offered to the applicant during the few days that she had slept on the couch.

11. As regards the strolls, in her application the applicant originally submitted that, unlike other patients, she had not been allowed to have a walk outdoors. However, as mentioned above, in her observations she alleged instead that, given her disability, the authorities should have taken measures to ensure her participation in the outdoor activity but failed to do so. In such circumstances, the applicant's complaint about the alleged ban on outdoor activity lacks credibility or any evidentiary support. Moreover, while it appears that her mobile phone had been taken by the hospital staff several days after she had been taken into detention, the applicant did not complain that she had been refused other means of communication, such as mail or payphone – which were in fact ensured under domestic law –, or even indicate what kind of restrictions had been imposed on her contact with the outside world (contrast *Gorobet v. Moldova*, no. 30951/10, §§ 8 and 52, 11 October 2011).

12. The parties also agreed that the applicant had not been left without food as she alleged in her application – during the first ten days of her stay at the hospital she had eaten bakery products and the hospital staff had shared their lunch with her. As to the alleged poor quality of food, although the food served in the hospital canteen appears to be monotone (see paragraph 4 above), there is no indication that the eating arrangements were improper or that the kitchen facilities were unsanitary (contrast *Modarca v. Moldova*, no. 14437/05, §§ 38 and 67, 10 May 2007). Nor is there evidence that the applicant, or indeed any other patient, had been physically affected by the quality of catering in the canteen, despite the applicant's allegations that she had felt unwell after trying the porridge (see *Valašinas v. Lithuania*, no. 44558/98, § 109, ECHR 2001-VIII, and *Yanez Pinon and Others v. Malta*, nos. 71645/13 and 2 others, § 113, 19 December 2017). In the Court's view, the ability to purchase food from the shops outside the hospital, must have compensated for the applicant's dissatisfaction with the possibly monotonous diet served at the hospital canteen (see *Valašinas*, cited above, ibid.). Moreover, although the hospital should have ascertained the applicant's dietary needs, the fact that, among other foodstuffs, honey was served at the canteen does not of itself raise an issue under Article 3, given the availability of other food and the applicant's refusal to consume honey (compare *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, § 192, 29 January 2019, and contrast *Ebedin Abi v. Turkey*, no. 10839/09, §§ 33-34 and 51-53, 13 March 2018).

13. What is more, there is no evidence that the applicant's stay at the hospital had any detrimental effect on her health or had caused any allergic reaction. Although the applicant alleged that her health had declined, she failed to produce any medical or other evidence showing the impact of those

conditions on her well-being (compare *Aerts v. Belgium*, 30 July 1998, § 66, *Reports of Judgments and Decisions* 1998-V; *Georgiev v. Bulgaria*, no. 47823/99, § 64, 15 December 2005; *Sabeva*, cited above, § 41; and contrast *Staykov v. Bulgaria*, no. 49438/99, § 41, 12 October 2006).

14. Lastly, the Government submitted that the applicant had herself refused to shower because, according to her, the shower facilities had been repulsive and she had lacked spare underwear. The Court notes that such reasons for refusal to shower were never alleged in her application. Nor is there any evidence in the case file concerning the conditions in the shower facilities of the hospital. Moreover, the Court finds it hard to see the link between the lack of spare underwear, or even clothes, as alleged by the applicant, and her inability to shower. It therefore finds that there have been no restrictions on her right to ensure personal hygiene. As to the provision of toiletries, the Court notes the findings of the HCAV report (see paragraph 4 above) that no toothpaste and toothbrush were supplied to the patients and that they had to ask for toilet paper and apparently soap from the hospital staff. Regrettable as it may be, such shortcomings alone are not sufficient to conclude that the conditions in the hospital fell short of the requirements of Article 3 of the Convention (contrast *Stanev*, cited above, §§ 23 and 209). Most importantly, all of these matters must be seen against the backdrop of the relative brevity of the applicant's stay in the hospital – a little less than a month (see *Korpachyova-Hofbauer v. Bulgaria* (dec.), no. 56668/12, § 32, 1 September 2015).

15. The Court accepts that the applicant could have experienced inconvenience as a result of the aforementioned conditions in the hospital. However, in view of the above considerations it is not persuaded that those conditions were so harsh as to reach the threshold of severity required to bring them within the ambit of Article 3 of the Convention.

16. It therefore follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 March 2022.

Ilse Freiwirth Deputy Registrar	Jolien Schukking President