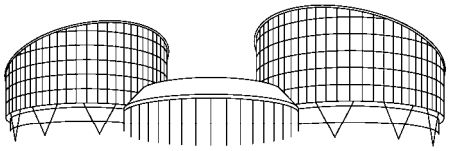

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF HOVHANNISYAN v. ARMENIA

(Application no. 50520/08)

JUDGMENT

STRASBOURG

20 July 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Hovhannisyan v. Armenia,

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

Aleš Pejchal, *President,*
Armen Harutyunyan,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 11 July 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 50520/08) 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") by an Armenian national, Mr Gagik Hovhannisyan ("the applicant"), on 9 October 2008.

2. The applicant was represented by Mr A. Tamrazyan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. On 27 January 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1972 and lives in Yerevan.

5. The applicant is a former deputy head of Vardashen prison in Armenia. According to the applicant, his father is an opposition activist.

6. On 4 September 2007 the Yerevan prosecutor's office decided to institute criminal proceedings on the basis of an application made by R.K., an inmate of the above-mentioned prison, who stated that on 23 August 2007 he had been beaten with rubber truncheons by the applicant and two other prison officers, A.G. and L.H. The decision also mentioned that a forensic medical examination of R.K., conducted after he had lodged the application, had revealed bodily injuries of a minor degree.

7. On 11 September 2007 the Yerevan prosecutor's office decided to impose a preventive measure in respect of the applicant: an undertaking not

to leave his place of residence. In substantiating the imposition of a non-custodial preventive measure, the decision stated that the applicant had a permanent residence, was not obstructing the examination of the case and that, if he remained at large, he would not abscond or obstruct the investigation.

8. On 18 September 2007 the preventive measure in respect of the applicant was lifted.

9. It appears that, during the investigation of the case, the head of Vardashen prison gave a statement confirming that R.K. had sustained bodily injuries, while the head of the prison medical unit stated that he had provided medical treatment to R.K. and made a corresponding entry in the medical register.

10. On 7 February 2008 the applicant was arrested on suspicion of abuse of power accompanied with violence.

11. On 10 February 2008 the applicant was charged with abuse of power accompanied with violence, as provided for by Article 309 § 2 of the Criminal Code of Armenia.

12. On the same day the investigator, M., applied to the Kentron and Nork-Marash District Court of Yerevan seeking to detain the applicant on remand. In substantiating this preventive measure, the investigator indicated that, if the applicant remained at large, he could abscond and obstruct the conduct of an objective and thorough examination by influencing witnesses. He referred to the nature and the gravity of the imputed offence, the punishment for which was imprisonment for a term exceeding one year.

13. On the same day the Kentron and Nork-Marash District Court of Yerevan granted the application on the grounds that the imputed offence was a grave one and that if the applicant remained at large, he could abscond, obstruct the examination of the case and influence the witnesses. It thus authorised the applicant's detention for two months, starting from the date of his arrest.

14. On 14 February 2008 the applicant lodged an appeal against the decision of the District Court. In particular, he sought to be released on bail, taking into account his good character, the fact that he had no previous convictions and had a child who was a minor.

15. On 28 February 2008 the Court of Appeal dismissed the appeal, finding that it was not competent to decide on the question of replacing detention with bail, since that question had not been raised before the District Court.

16. On 28 March 2008 investigator M. applied again to the Kentron and Nork-Marash District Court of Yerevan, seeking an extension of the applicant's detention. In substantiating the application, the investigator referred to the nature and gravity of the imputed offence and said that there were sufficient grounds to assume that, if released, the applicant could abscond or obstruct the examination of the case.

17. On 4 April 2008 the Kentron and Nork-Marash District Court of Yerevan granted the application and extended the applicant's detention to 7 July 2008. In doing so, the District Court indicated the same reasons as those given in the application.

18. On 9 April 2008 the applicant lodged an appeal against the decision of the District Court, seeking to be released on bail.

19. On 17 April 2008 the Court of Appeal dismissed the applicant's appeal.

20. According to the applicant, on 26 May 2008 the same charge as the one against him was also brought against A.G. and L.H. and, as a preventive measure, they made an undertaking not to leave their places of residence.

21. On 30 May 2008 the investigation was officially concluded and the case was sent to the Criminal Court of Yerevan.

22. On 12 June 2008 the Criminal Court of Yerevan decided to set the case down for trial. The decision stated that there was no necessity to change the preventive measure imposed on the applicant.

23. At a hearing held on 24 November 2008 the applicant applied to the Criminal Court of Yerevan seeking to change the preventive measure. He argued that there were no grounds to assume that he would abscond, obstruct the examination of the case during the court proceedings or fail to appear when summoned by the trial court. In this regard, he referred to the fact that he had not absconded or in any way tried to obstruct the course of justice in the period preceding his arrest and detention, despite the fact that the investigation had already been ongoing for several months before his arrest. The applicant further argued that he was of good character, and had a family with a child who was a minor and a permanent residence.

24. On the same date the examining judge decided to dismiss the application, finding that there was sufficient evidence in the case file which did not rule out the applicant's involvement in the commission of a grave crime.

25. On 12 January 2009 the Criminal Court of Yerevan found the applicant guilty as charged and sentenced him to two years' imprisonment.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure

26. The relevant provisions of the Code of Criminal procedure relating to the imposition of detention on remand and other preventive measures are set out in the Court's judgment in the case of Ara Harutyunyan (see *Ara Harutyunyan v. Armenia*, no. 629/11, §§ 30-37, 20 October 2016).

B. Criminal Code (in force from 1 August 2003)

27. Under Article 309 § 2 of the Criminal Code, the intentional acts of an official which manifestly exceed his authority, cause substantial harm to a person and are accompanied with violence are be punishable by two to six years of imprisonment with deprivation of the right to occupy certain posts or to carry out certain activities for up to three years.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

28. The applicant complained under Article 5 § 3 of the Convention that his detention had exceeded a reasonable time and had been unjustified. He alleged that the domestic courts had failed to provide "relevant" and "sufficient" reasons for his detention and that the true reason for his detention and prosecution had been his father's opposition activism.

29. Article 5 § 3 of the Convention reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

30. The Government contested the applicant's argument.

A. Admissibility

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

32. The applicant argued that the pre-trial investigation phase had taken about nine months and the criminal proceedings about seven months. During those nine months, only five people had been questioned and one confrontation had been organised by the investigator. The applicant had not hidden from the investigating authorities, nor was there any evidence that he had ever approached any of the witnesses or tried to put pressure on them. Had the applicant intended to abscond, he could have done so immediately after 4 September 2007 when the criminal proceedings were instituted. The

pre-trial investigation and the criminal trial had been unreasonably drawn out, due to the subjective approach taken by the investigator.

33. The Government submitted that the applicant's detention had not breached the "reasonable time" requirement in Article 5 § 3 of the Convention and that the domestic courts had provided "relevant" and "sufficient" reasons for it. The District Court's decision to detain the applicant and to extend his detention had been based on the fact that there had been a risk that he could abscond, obstruct the examination of the case and influence the witnesses. In the Court's case-law, such reasons were accepted as being "relevant" and "sufficient". Moreover, as the applicant was deputy head of Vardashen prison and the witnesses were either employees or accused persons from the same facility, the risk that the applicant could put pressure on the witnesses was well founded and real.

34. The Government argued that the applicant had remained in pre-trial detention for less than four months and had been detained for seven months during the trial, which was within the time-limits prescribed by the domestic legislation and in conformity with the Convention requirements. Both the applicant's initial detention and its extension had been justified by the fact that a number of investigative measures had needed to be carried out in the case. The pre-trial investigation had been accomplished as soon as all necessary measures had been taken and all relevant facts disclosed. There were in total three accused who had all refused to give written testimonies, to answer any questions about the charges against them and to participate in the investigation. That had had an impact on the length of the investigation. Moreover, during the criminal proceedings, the case had been adjourned nineteen times, eight of which had been at the request of the applicant or his counsel. The authorities had acted with due diligence and promptness during the investigation phase and there had thus been no violation of Article 5 § 3 of the Convention.

2. The Court's assessment

(a) General principles

35. 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 (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV; and *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012).

36. The Court has also held that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. 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 *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87 and 102, 5 July 2016). Furthermore, when deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures for ensuring his appearance at trial (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Idalov*, cited above, § 140).

37. Justifications which have been deemed "relevant" and "sufficient" reasons in the Court's case-law have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder and the need to protect the detainee (see, for instance, *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9; *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7; *Tomasi v. France*, 27 August 1992, § 95, Series A no. 241-A; *Toth v. Austria*, 12 December 1991, § 70, Series A no. 224; *Letellier v. France*, 26 June 1991, § 51, Series A no. 207; and *I.A. v. France*, 23 September 1998, § 108, *Reports of Judgments and Decisions* 1998-VII).

38. The presumption is always in favour of release. The national judicial authorities must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, among other authorities, *Buzadji*, cited above, §§ 89 and 91). Arguments for and against release must not be general and abstract (see, among other authorities, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts); *Becciev v. Moldova*, no. 9190/03, § 56, 4 October 2005; *Piruzyan v. Armenia*, no. 33376/07, § 92, 26 June 2012; *Zayidov v. Azerbaijan*, no. 11948/08, § 57, 20 February 2014; and *Merčep v. Croatia*, no. 12301/12, § 79, 26 April 2016).

39. The danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see, among other authorities, *Letellier*, cited above, § 43; *Becciev*, cited above, § 58; *Piruzyan*, cited above, § 95; and

Zayidov, cited above, § 59). Consideration must be given to the character of the person involved, his or her morals, home, occupation, assets, family ties and other links with the country in which he or she is being prosecuted, as well as the person's international contacts (see, among other authorities, *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8; and *Buzadji,* cited above, § 90).

40. Furthermore, the danger of the accused's hindering the proper conduct of the proceedings cannot be relied upon *in abstracto*, it has to be supported by factual evidence (see *Trzaska v. Poland*, no. 25982/94, § 65, 11 July 2000; *Becciev*, cited above, § 59; *Piruzyan*, cited above, § 96; and *Merčep*, cited above, § 89).

(b) Application of the above principles in the present case

41. In the present case, the applicant alleged, *inter alia*, that the courts had failed to provide "relevant" and "sufficient" reasons for their decisions to impose and extend his detention, in breach of Article 5 § 3 of the Convention. The Court notes at the outset that Article 135 of the Code of Criminal Procedure prescribes the grounds which justify the imposition of a preventive measure, including detention. These appear to resemble those established in the Court's case-law under Article 5 § 3 of the Convention. Furthermore, Article 136 of the Code requires the decision imposing detention to be reasoned and to contain a substantiation of the necessity of choosing detention as a preventive measure.

42. On 10 February 2008 the applicant was brought before the Kentron and Nork-Marash District Court of Yerevan, which examined and granted the investigator's application for his detention. In so doing, the District Court relied, in addition to the existence of reasonable suspicion, on the risk of the applicant's absconding and obstructing the investigation by influencing the victim and/or witnesses as the grounds justifying his detention.

43. The Court notes, however, that the District Court limited itself to indicating those grounds in its decision in an abstract and stereotyped manner, without providing any reasons, including facts or evidence, as to why it found those grounds to be justified in the applicant's case, confining its reasoning to a mere citation of the relevant parts of Article 135 of the Code of Criminal Procedure (see paragraph 13 above). No explanation was provided as to why the court found the investigator's application to be well-founded or why it was necessary, in spite of the fact that a non-custodial preventive measure, namely an undertaking not to leave his place of residence, had already been imposed on the applicant on the grounds that he had a permanent residence, was not obstructing the examination of the case and that if he remained at large, he would not abscond or obstruct the investigation. Even that measure was lifted within a few days (see paragraphs 7-8 above). The District Court therefore failed to take into

account such important factors as the applicant's behaviour during the investigation and his personal situation, as well as any other relevant factors. It also failed to address any of the objections raised by the applicant or to consider the possibility of releasing him on bail.

44. The Court observes that the applicant's appeals and applications for release, as well as the investigator's subsequent application for an extension of the applicant's detention, were examined by the courts in a similar manner (see paragraphs 15, 17, 19 and 24 above). The Court has frequently found a violation of Article 5 § 3 of the Convention where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see, among other authorities, *Smirnova*, cited above, § 70; *Vasilkoski and Others v. "the former Yugoslav Republic of Macedonia"*, no. 28169/08, § 64, 28 October 2010; and *Tretyakov v. Ukraine*, no. 16698/05, § 59, 29 September 2011).

45. The Court notes that, after eleven months in detention, the applicant was convicted and sentenced to two years' imprisonment (see paragraph 25 above). No justification was provided at any point in time as to why it had not been possible to release him during the pre-trial investigation or the trial.

46. The Court lastly notes that the use of stereotyped formulae when imposing and extending detention appears to be a recurring problem in Armenia, and a violation of Article 5 § 3 of the Convention has already been found in a number of cases (see *Piruzyan v. Armenia*, no. 33376/07, §§ 97-100, 26 June 2012; *Malkhasyan v. Armenia*, no. 6729/07, §§ 74-77, 26 June 2012; *Sefilyan v. Armenia*, no. 22491/08, §§ 88-93, 2 October 2012; and *Ara Harutyunyan v. Armenia*, cited above, §§ 54-62).

47. In the light of the above, the Court considers that the domestic courts failed to provide relevant and sufficient reasons, in addition to the existence of reasonable suspicion, for their decisions imposing and extending the applicant's detention.

48. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. REMAINDER OF THE APPLICATION

49. The applicant also complained under Article 5 § 1 (c) of the Convention that he had been detained in the absence of any reasonable suspicion of having committed an offence.

50. Having regard to the material before it and its findings above (see paragraph 42 above), the Court finds that the facts complained of do not disclose any appearance of a violation of the applicant's rights under the Convention. Accordingly, this part of the application is manifestly ill-

founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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."

A. Damage

52. The applicant claimed 1,648,915 Armenian drams (AMD) in respect of pecuniary damage and 70,000 euros (EUR) in respect of non-pecuniary damage.

53. The Government considered that the claims for pecuniary and non-pecuniary damage should be rejected as there was no causal link between the alleged violation and the damage suffered.

54. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violation found. It therefore awards him EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicant also claimed AMD 3,000,000 for the costs and expenses incurred before the Court.

56. The Government considered that the claim for costs and expenses should be rejected as, according to the terms of the contract between the applicant and his counsel, no costs had yet been paid by the applicant. No evidence had been submitted by the applicant that the above-mentioned costs had actually been incurred.

57. Regard being had to the documents in its possession and to its case-law, the Court rejects the applicant's claim for costs and expenses for lack of any supporting documents.

C. Default interest

58. The Court 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. *Declares* the complaint under Article 5 § 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Aleš Pejchal
Deputy Registrar	President