



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

THIRD SECTION

DECISION

Application no. 61730/08
Davit MATEVOSYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 12 February 2013 as a Chamber composed of:

Josep Casadevall, *President*,

Alvina Gyulumyan,

Corneliu Bîrsan,

Luis López Guerra,

Nona Tsotsoria,

Johannes Silvis,

Valeriu Grițco, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 1 December 2008,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Davit Matevosyan, is an Armenian national who was born in 1960 and lives in Yerevan. He is represented before the Court by Mr V. Grigoryan and Mr M. Shushanyan, lawyers practising in Yerevan.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The 19 February 2008 presidential election in Armenia and post-election demonstrations

3. The applicant held various senior posts within the Ministry of Internal Affairs in the mid-1990s.

4. On 19 February 2008 a presidential election was held in Armenia. The main contenders were the then Prime Minister, Serzh Sargsyan, and the main opposition candidate, Levon Ter-Petrosyan. According to the applicant, during the election he was a member of Levon Ter-Petrosyan's central election headquarters.

5. It appears that immediately after the election, Levon Ter-Petrosyan announced that the election had not been free and fair. From 20 February 2008 onwards protest rallies were held by thousands of Levon Ter-Petrosyan's supporters, the main meeting place for them being the central Freedom Square in Yerevan and the surrounding park (known as Opera Square). It appears that a few hundred demonstrators stayed in that area around the clock, having set up tents. According to the applicant, he regularly attended the on-going demonstrations and sit-ins.

6. On 24 February 2008 the Central Election Commission announced that Prime Minister Sargsyan had won the election.

2. The events of 1 March 2008 and institution of criminal proceedings

7. On 1 March 2008, apparently at some point between 6 and 7 a.m., police forces arrived on Freedom Square and started to disperse the opposition sit-in by bringing down the tents and pushing the opposition supporters out of the square. It further appears that clashes took place and that eventually the demonstrators had to flee from the square, chased by the police.

8. On the same date criminal proceedings were instituted for organising and holding unauthorised mass public events, making calls inciting to disobey the decisions ordering an end to the unauthorised events, illegal possession and carrying of weapons, and using violence, dangerous to life, against police officers who were carrying out their official duties.

9. It appears that later that day the violence escalated and more clashes took place in Yerevan between the law enforcement authorities and the opposition supporters. The clashes continued until late at night, resulting in ten deaths and numerous injured and a state of emergency being declared.

10. On 2 March 2008 another set of criminal proceedings was instituted for organising mass disorder resulting in violence and casualties, and illegal possession and carrying of weapons. On the same day the first criminal case was joined to the second one.

3. *The criminal proceedings against the applicant*

11. In the early morning of 1 March 2008 the applicant was at Freedom Square when the clashes between the police and the demonstrators began. Following the dispersal of the sit-in, at 8.50 a.m. the applicant was taken to the police station in the Kanaker-Zeytun District of Yerevan (hereafter “the district police station”) from Freedom Square on suspicion of having used violence against police officers. In particular, according to the reports submitted on the same day by police officers E.K. and H.K. of the district police station to the head of the district police station, the applicant refused their lawful orders to visit a police station, put up resistance by pushing them away and attempted to flee.

12. The applicant alleges that he did not use any violence against the police officers. In particular, as the police entered Freedom Square and started a violent dispersal of the sit-in, he was trying to persuade the police officers not to apply force against the demonstrators and to settle the conflict through negotiations. However, tear gas had been twice used against him and he had been hit on the thigh with a police truncheon. He had been unable to see and hear properly and was pushed to the ground. He had then stood up and walked towards Northern Avenue, adjacent to Freedom Square. Two other demonstrators, H.M. and A.O., walked along with him. After some time, as they reached the corner of Northern Avenue and Abovyan Str., police officers had approached, ordered them to follow, and taken them by the arms. He had then been handcuffed and taken by car to the district police station where he was kept handcuffed for 16 hours.

13. As it appears from a letter from the head of the district police station to the Chief of the Special Investigating Service, besides the applicant, several other opposition supporters were taken that morning from Freedom Square to the district police station, including H.M. and A.O.

14. On 2 March 2008 the applicant was officially arrested.

15. On 4 March 2008 the applicant was formally charged under Article 225.1 § 2 and Article 316 § 2 of the Criminal Code (the CC). This decision stated that the applicant had participated in unlawful public events organised by L. Ter-Petrosyan and his co-thinkers, made calls to disobey the decision ordering an end to holding such public events and verbally abused the police officers in public. Thereafter, on 1 March 2008 at around 6 a.m., when police officers demanded that the demonstrators gathered at Freedom Square allow them to check the veracity of the information that the demonstrators had arms and ammunition and once again warned them to end the unlawful event, he and other demonstrators, disobeying their lawful orders, had used violence of different nature and degree on police officers who were carrying out their official duties.

16. On 4 March 2008 the District Court, based on a corresponding motion by the investigator, decided to detain the applicant on remand for a period of two months, starting from 2 March 2008. The District Court found

that, taking into account the nature and gravity of the imputed offence, the applicant, if he remained at large, might obstruct the examination of the case, abscond, commit a new crime or exert pressure on the witnesses. It also refused to grant the applicant bail.

17. On 27 March 2008 the charges against the applicant were modified. In particular, the charges under Article 225.1 § 2 and Article 316 § 2 of the CC were dropped as unsubstantiated, but a new charge against the applicant was brought under Article 316 § 1 of the CC for using violence not dangerous to life or limb against the police officers. On the same day the applicant was questioned and acknowledged his guilt.

18. On 3 April 2008 the investigation into the applicant's case was concluded and the criminal case was referred to a trial court.

4. The trial proceedings

19. On 11 April 2008 the Kentron and Nork-Marash District Court of Yerevan admitted the case to its proceedings. After the admission of the case, the applicant lodged two written motions with the trial court seeking to be released from detention and to summon to the trial H.M. and A.O. as witnesses on his behalf.

20. On 21 April 2008 the District Court decided to set the case down for trial. Together with the decision, it also ruled to leave the applicant's measure of restraint, namely detention, unchanged and dismissed the applicant's motion to summon as witnesses H.M. and A.O.

21. From 28 April 2008 the applicant's trial was conducted. During the trial the applicant retracted the confession he had made at the investigation stage and pleaded not guilty, claiming that he had not used violence against the police officers on 1 March 2008. Police officers E.K. and H.K. were questioned as witnesses before the trial court and maintained their statements against the applicant. The applicant alleges that he was unable to question properly the police officers during the trial as the trial judge disallowed some of the questions, namely those related to the lawfulness of the police actions in the morning of 1 March 2008, as not related to the circumstances of the case under examination. During the trial the applicant again petitioned the trial court to summon as witnesses H.M. and A.O. In substantiation, the applicant submitted to the court written statements of the above two persons in which they stated that they had been arrested by the police at the same time and place and that no violence had been used by them during the arrest, and requested that the investigating authorities be ordered to provide the materials of the case against H.M. and A.O. It appears that the trial court dismissed the motion. Furthermore, the applicant also lodged a motion seeking to be released. The trial court dismissed the motion for the same reasons as those indicated in its decision of 4 March 2008.

22. On 16 June 2008 the Kentron and Nork-Marash District Court of Yerevan delivered its judgment, finding the applicant guilty as charged and sentencing him to three years' imprisonment. In doing so, the District Court essentially relied on the witness statements of the two police officers as evidence.

23. On 3 July 2008 the applicant, who was represented by a defence lawyer throughout the criminal proceedings against him, lodged an appeal against his court verdict claiming, *inter alia*, that the trial court, by dismissing his motion to summon as witnesses H.M. and A.O. and relying on witness statements of police officers E.K. and H.K., had violated his right to a fair trial as protected by Article 6 of the Convention. Besides, his prosecution and conviction were also in violation of Articles 10, 11 and 14 of the Convention.

24. From 28 July 2008 the Criminal Court of Appeal started the examination of the applicant's appeal. During the appeal examination the applicant lodged a motion similar to the one lodged before the trial court seeking to summon H.M. and A.O. as witnesses on his behalf. According to the applicant, when in the court room during the appeal hearings, his legs were shackled to his seat.

25. On 24 September 2008 the Criminal Court of Appeal dismissed the applicant's appeal on points of law and upheld the judgment of 16 June 2008. As to the applicant's motion to call witnesses, the Court of Appeal dismissed it, finding that the reasons brought by the applicant were insufficient for finding that the trial court's dismissal of a similar motion was unsubstantiated. The Court of Appeal further held that, as could be seen from the materials of the case, before the police officers approached the applicant, both H.M. and A.O. had already been invited by the police officers to visit the police station and left.

26. On 17 December 2008 the applicant lodged an appeal on points of law in which he raised complaints similar to those raised in his appeal of 3 July 2008.

27. On 22 January 2009 the Court of Cassation decided to declare the applicant's appeal inadmissible for lack of merit.

B. Relevant domestic law

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

28. Article 316 § 1 prescribes that inflicting violence or threatening to inflict violence, not dangerous for life or health, on a public official or his next-of-kin, connected with the performance of his official duties, shall be punishable by a fine of between 300 and 500 times the minimum wage or detention of up to one month or imprisonment for a period not exceeding five years.

2. *For other relevant domestic provisions and international documents see the Statement of Facts in the case of Saghatelyan v. Armenia, no. 23086/08, communicated on 30 November 2010.*

COMPLAINTS

A. Complaints raised in the introductory letter

29. In the introductory letter sent to the Court on 1 December 2008 the applicant complained that his prosecution and conviction were in violation of Articles 5, 6, 7, 10, 11, 13, 14 and 18 of the Convention.

B. Complaints indicated in the application form

30. In the completed application form lodged with the Court on 21 June 2009 the applicant raises the following complaints:

31. The applicant complains under Article 3 of the Convention that he was subjected to torture in the early morning of 1 March 2008 when the police officers beat him with batons, used tear gas against him and pushed him out of Freedom Square; upon his arrest he was kept for 16 hours at the police station in uncertainty and handcuffed; and that he was subjected to inhuman and degrading treatment by having shackles on his legs during the examination of his appeal by the Criminal Court of Appeal.

32. The applicant complains under Article 5 §§ 1 (c) and 3 of the Convention that his arrest and detention lacked reasonable suspicion and were unlawful; he was unable to obtain the review of the lawfulness of his detention in the period from 27 March until 21 April 2008, namely after the charges against him were modified and a new charge was brought; and that the domestic courts did not consider non-custodial preventive measures but detained him on remand and did not release him on bail.

33. The applicant complains under Article 6 § 1 of the Convention that his trial was unfair because the domestic courts were not independent and impartial; the Court of Cassation provided no reasons for its decision dismissing his appeal on points of law; the domestic courts failed to conduct a proper examination of his case, did not evaluate the evidence correctly and reached wrong conclusions on his guilt.

34. The applicant complains under Article 6 § 3 (d) of the Convention that:

(a) he was unable to question properly the witnesses against him, namely police officers H.K. and E.K., as the presiding judge disallowed certain questions he posed to those witnesses at the trial, namely those concerning

the lawfulness of the police actions during his arrest and transfer to the police station;

(b) he was not allowed to summon to the trial witnesses on his behalf, namely H.M. and A.O. who witnessed his arrest on the street on 1 March 2008.

35. The applicant complains under Article 7 of the Convention that he was found guilty for acts which could not be considered as criminally punishable as they inflicted no substantial damage.

36. The applicant complains under Articles 10 and 11 of the Convention that his prosecution and conviction were in breach of his right to freedom of expression and freedom of peaceful assembly as he was punished by the authorities for his opposition activism and participation in opposition rallies.

37. The applicant complains under Article 13 of the Convention that he had no effective remedy against the alleged violations of his rights under Articles 5, 6, 10 and 11 of the Convention

38. The applicant complains under Article 14, in conjunction with Articles 5, 6, 10 and 11 of the Convention, that he was discriminated against on the basis of his political views because the true reason behind his prosecution and conviction was his opposition activism.

THE LAW

A. Impossibility to obtain the examination of witnesses both on the applicant's behalf and against him

39. The applicant complains that he was not allowed to summon to the trial witnesses on his behalf, namely H.M. and A.O. whose testimony could have proved his innocence. In this respect, he relies on Articles 6 § 1 and 6 § 3 (d) of the Convention, which, in so far as relevant, provide:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him[.]”

40. The Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of this complaint to the respondent Government.

B. Alleged violation of the applicant’s right to freedom of expression and to freedom of peaceful assembly and the alleged discrimination on the basis of political opinion.

41. The applicant complains that the true reason for his prosecution and conviction was his political views and participation in opposition rallies, which amounted to a violation of his right to freedom of expression and freedom of peaceful assembly, and also constituted discrimination on the basis of political opinion. He invokes Articles 10, 11 and 14 of the Convention which, in so far as relevant, provide:

Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Article 11

“1. Everyone has the right to freedom of peaceful assembly...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

Article 14

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... political ... opinion...”

42. The Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

C. Other complaints

43. The applicant also raised a number of other complaints under Articles 3, 5 §§ 1 and 3, 6 §§ 1 and 3 (d), 7, 13 and 18 of the Convention (see paragraphs 29-37 above).

44. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the complaints concerning the alleged violation of the applicant's right to obtain the attendance and examination of witnesses on his behalf; and the alleged violation of the applicant's right to freedom of expression and to freedom of peaceful assembly and the alleged discrimination on the basis of political opinion;

Declares the remainder of the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President