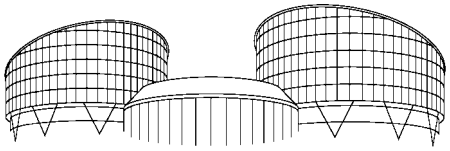

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF D.S. v. ARMENIA

(Application no. 82348/17)

JUDGMENT

STRASBOURG

15 February 2024

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

In the case of D.S. v. Armenia,

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

Stéphanie Mourou-Vikström, *President*,
Lado Chanturia,
Mattias Guyomar, *judges*,
and Sophie Piquet, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 82348/17) 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 7 December 2017 by a Turkmen national, D.S. ("the applicant"), who was born in 1980, lives in Krasnodar and was represented by Mr A. Ghazaryan and Ms M. Baghdasaryan, lawyers practising in Yerevan;

the decision to give notice of the complaint under Article 5 § 4 of the Convention concerning the alleged lack of speedy review of the lawfulness of the applicant's detention pending extradition 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 inadmissible the remainder of the application;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 25 January 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged failure of the Criminal Court of Appeal ("the Court of Appeal") to carry out a speedy review of the lawfulness of the applicant's detention pending extradition.

2. The applicant, a Turkmen national who was facing criminal prosecution in his home country, was arrested upon his arrival at the Zvartnots International Airport and on 1 September 2017 the Kentron and Nork-Marash District Court of Yerevan ("the District Court") ordered his detention pending extradition.

3. On 6 September 2017 the applicant lodged an appeal against the above decision. By letter of 7 September 2017, the Court of Appeal asked the District Court to transfer the case file to it, which the latter did on 15 September 2017. The Court of Appeal received the case file on 20 September 2017, took over the applicant's appeal on 22 September 2017 and set a hearing for 25 September 2017.

4. According to the relevant audio recording of the court hearing of 25 September 2017, it had been impossible to ensure the applicant's presence in court due the strict time-limits to review a detention decision.

The presiding judge enquired from the applicant's representative whether she would like to have the case adjourned because of the applicant's absence. The representative replied that the applicant had expressed his wish to be present at the appeal hearing and thus she agreed to the adjournment. Then the prosecutor informed the court that the applicant had dismissed his representative and had appointed a new one. The Court of Appeal, while noting that the case should be adjourned to ensure the applicant's new representative's presence, went on to conclude that the case was being adjourned because of the applicant's absence and that a summons would be sent to the new representative for the hearing set for 28 September 2017. The Court of Appeal asked the prosecutor if they could ensure the applicant's presence for the following hearing or the court should assist them in that matter. In reply, the prosecutor requested the court to send a summons to the Nubarashen Remand Prison where the applicant had been held and, at the same time, undertook to ensure that the applicant attend the following hearing.

5. According to the relevant audio recording of the court hearing of 28 September 2017, the applicant's presence had not been ensured due to a technical reason. After enquiring from the applicant's lawyer if he would prefer to have the hearing postponed due to the applicant's absence, to which the lawyer agreed, the Court of Appeal adjourned the hearing until 4 October 2017. On the last-mentioned date it dismissed the applicant's appeal.

6. On 8 December 2017 the applicant lodged a request under Rule 39 of the Rules of Court asking the Court to, *inter alia*, prevent his removal to Turkmenistan. On the same date the Court decided to grant the applicant's request under Rule 39 to stay his extradition.

7. The District Court extended the applicant's detention twice, in particular on 26 October and then on 22 December 2017.

8. On 27 December 2017 the applicant lodged an appeal against the last-mentioned decision. By letter of 28 December 2017, the Court of Appeal requested the case file from the District Court.

9. On 16 January 2018 the applicant asked the District Court to transfer the case file to the Court of Appeal as soon as possible, pointing out that the excessive delay in considering his appeal against his detention was in breach of Article 5 § 4 of the Convention.

10. On 17 January 2018 the District Court forwarded the case file to the Court of Appeal, which received it and took over the applicant's appeal on 18 January 2018. It set a court hearing for 22 January 2018.

11. According to the relevant audio recording of the appeal hearing of 22 January 2018, the Court of Appeal adjourned the hearing to obtain a translation of the Court's letter informing the Government about the interim measure applied in the applicant's case. The applicant agreed to the adjournment.

12. On the next hearing, that is 25 January 2018, the Court of Appeal adjourned the hearing once again so that the parties would study the translation of the aforementioned letter of the Court. It set the next court hearing on 30 January 2018. The Government claimed that the Court of Appeal had adjourned the hearing of 30 January 2018 until 7 February 2018 because it fell on a non-working day. On the last-mentioned date the Court of Appeal retired to the deliberations room to adopt a decision which was delivered on 8 February 2018. In particular, the Court of Appeal allowed the applicant's appeal and ordered his release.

13. On 1 July 2019 the applicant obtained refugee status and asylum in Armenia. On 25 May 2020 the Court lifted the interim measure indicated on 8 December 2017.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

14. The applicant complained that his appeals against his detention orders of 1 September and 22 December 2017 had not been examined speedily in breach of Article 5 § 4 of the Convention.

A. Admissibility

15. The Government submitted that the applicant had failed to exhaust the domestic remedies. In particular, they claimed that the applicant had failed to challenge before the Court of Cassation the speediness of the review of his detention by the Court of Appeal. In this respect, the Government referred to Article 403 (see the summary of the said provision in *Ghavalyan v. Armenia*, no. 50423/08, § 52, 22 October 2020) and Article 412 of the Code of Criminal Procedure ("the CCP"), which laid down time-limits for lodging an appeal on points of law against the judicial acts of the appeal court. They argued that the said remedy was effective both in theory and in practice and to that end submitted one case-law example. In particular, the case concerned an appeal on points of law lodged by the legal heir of a deceased victim, whereby he sought to quash the decision of the lower instance upholding the exemption of the accused from criminal responsibility due to the expiry of the relevant limitation periods. The appellant had argued that this had been mostly because of the domestic courts' failure to examine the case speedily. The Court of Cassation refused to quash the contested decision but found that there had been a breach of the appellant's right to a fair trial within a reasonable time.

Lastly, the Government claimed that, following the acknowledgment of the breach of his rights, the applicant could have sought compensation under

Article 162.1 of the Civil Code in respect of non-pecuniary damage suffered (see the summary of the relevant provision in *Vardan Martirosyan v. Armenia*, no. 13610/12, § 37, 15 June 2021).

16. In reply, the applicant essentially argued that the remedy before the Court of Cassation was not effective and that the case-law example submitted by the Government was irrelevant to his case.

17. The parties also made a reference to another domestic case-law where the Court of Cassation had allegedly examined the issue of speediness of the review of detention by the appeal court, but failed to submit it.

18. The Court has previously found that the Court of Cassation was not an effective remedy for detention cases (see *Vardan Martiroysan*, cited above, § 41, and the references cited therein) and it does not see any reason to depart from its finding in the present case. In particular, the Government did not put forward any new argument capable of persuading the Court to reach a different conclusion and the only case-law example actually submitted by them is irrelevant to the present case. Also, they failed to clarify the procedure applicable under Article 162.1 of the Civil Code in respect of cases similar to that of the applicant or produce any examples of the domestic practice for that matter. Hence, the Court dismisses the non-exhaustion objection.

B. Merits

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

20. The general principles concerning the speediness of the proceedings for review of detention have been summarised in *Ilnseher v. Germany* ([GC], nos. 10211/12 and 27505/14, §§ 251-256, 4 December 2018).

1. Review of the applicant's appeal of 6 September 2017

21. It is noted that the Court of Appeal examined and rejected the applicant's appeal of 6 September 2017 on 4 October 2017, that is in twenty-eight days. The Court observes that, following receipt of the applicant's appeal against his detention, a hearing was scheduled only nineteen days later (see paragraph 3 above). It appears that the delay was mostly due to the time it took from the District Court to forward the case file to the Court of Appeal. Although the Government did not specify when the District Court had actually received the request of the Court of Appeal to transfer the case file, both instances were closely located. The Government failed to submit any argument to justify the said period. Nor is there any evidence that the delay could be attributable to the applicant.

22. As regards the hearings of 25 and 28 September 2017, the Court of Appeal postponed them in order to ensure the applicant's presence at the hearings. In this respect, even if the Court were to accept the Government's argument that the applicant should have informed the Court of Appeal about his wish to attend the hearing in his appeal lodged with that court on 6 September 2017, his former representative had done so during the hearing of 25 September 2017. In particular, she informed the Court of Appeal that the applicant had explicitly requested to be present at the appeal hearing. More importantly, it transpires from the relevant court records that both the Court of Appeal and the prosecutor undertook to ensure the applicant's presence at the hearing of 28 October 2017, which, however, they failed to do for a certain technical reason, as put by the Court of Appeal, even though the remand prison was geographically close.

23. It does not appear that any complex issues were involved in the determination of the lawfulness of the applicant's detention by the Court of Appeal. Nor was it argued that a proper review of the detention required, for instance, the collection of additional observations or documents pertaining to the applicant's personal circumstances.

24. The Court therefore concludes that, in the circumstances of the present case, the period of twenty-eight days in examining the applicant's appeal against his detention decision of 1 September 2017 was excessive because the delays were mostly attributable to the domestic authorities (compare *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; *Karimov v. Russia*, no. 54219/08, § 127, 29 July 2010; and *Niyazov v. Russia*, no. 27843/11, § 163, 16 October 2012).

2. Review of the applicant's appeal of 27 December 2017

25. The Court notes that the Court of Appeal examined and allowed the applicant's appeal of 27 December 2017 on 8 February 2018, that is in forty-two days. Notably, following receipt of the applicant's appeal against his detention, a hearing was scheduled only twenty-six days later (see paragraph 10 above). Similarly, the delay was mostly due to the time it took the lower instance to transfer the case file to the appeal court. The Government did not submit any argument to justify the delay and there is nothing to suggest that it was in any way attributable to the applicant. In fact, it appears that it was only after the applicant's enquiry that the District Court transferred the case file to the Court of Appeal.

26. What is more, even if the Court were to accept that the adjournment of the hearings of 22 and 25 January 2018 had been necessary, the Government failed to submit any evidence that the overall period of forty-two days was justified. Moreover, the mere fact that the applicant did not object to the adjournments does not detract from this finding because it was the authorities' duty to examine the applicant's appeal against the extension of his detention expeditiously. However, it has not been shown

that in the present case the authorities took reasonable measures to comply with the speed requirement under Article 5 § 4. Hence, the period of the review of the applicant's appeal of 27 December 2017 was excessive (see *Abdulkhakov v. Russia*, no. 14743/11, §§ 198-200, 2 October 2012, and the case-law references cited in paragraph 24 above).

3. Conclusion

27. There has accordingly been a violation of Article 5 § 4 of the Convention.

II. REMAINING COMPLAINTS

28. In his reply to the Government's observations, the applicant also complained, under Article 34 of the Convention, that he had never received a copy of the audio recordings of the appeal court hearings submitted by the Government together with their observations and that the latter refused his subsequent request to be provided with a copy of the said material. The Court has examined that part of the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, this complaint either does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,300 in respect of costs and expenses incurred before the Court.

30. The Government contested these claims.

31. The Court awards the applicant EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

32. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000 covering the applicant's legal costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the length of the review proceedings of the applicant's detention admissible and the complaint under Article 34 of the Convention inadmissible;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 15 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sophie Piquet Acting Deputy Registrar	Stéphanie Mourou-Vikström President