

Case Summary

Virabyan v Armenia

Application Number: 40094/05

1. Reference Details

Jurisdiction: European Court of Human Rights (EctHR) – Chamber Decision

Date of Decision: 2 October 2012

Case Status: 3 months in which to appeal to Grand Chamber

Link to full case: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113302>

2. Facts of the Case

The case was brought against Armenia (the Respondent) by an Armenian national, Mr Grisha Virabyan (the Applicant), on 10 November 2005. He alleged that he had been tortured while in police custody and no effective investigation had been carried out into his allegations of torture, that the grounds on which criminal proceedings against him had been terminated violated the presumption of innocence and that his ill-treatment had been motivated by his political opinion.

The Applicant was a member of one of the main opposition parties in Armenia, the People's Party of Armenia (PPA). In early 2003 a presidential election was held, which was found by an international mission to fall short of international standards. Mass protests followed and the PPA's candidate challenged the results. The Applicant was allegedly involved in a number of protests and rallies that took place in 2003 and 2004.

On 23 April 2004, the Applicant was arrested by police for allegedly carrying a firearm at a rally on 12 April 2004. The Applicant alleged that, later that day, when in police custody, one police officer asked him a number of questions relating to his political views and intentions to change the government and upset the stability of the country. He alleged that later at the station he was severely beaten by a group of police officers. In self-defence, he had struck back by hitting an officer with a mobile phone charger. The treatment included punching and kicking and being hit in the groin with a metal object. Accordingly, he was beaten until he was unconscious. The policemen involved alleged that the Applicant had been aggressive and used foul language and had attacked a police officer resulting in the others stepping in by way of defence. The Applicant was charged with using force against a public official.

Later that day, an investigation began (by an investigator the Applicant alleged was partial), during which various officers denied that the Applicant had been hit and stated that they were unaware of his political affiliation although they knew he was a friend of the PPA candidate. During the investigation, the Applicant was taken to hospital. Despite doctors' recommendations, he was not allowed to stay overnight but was taken back to the police cell to spend the night.

On 24 April 2004, the Applicant was returned to hospital where the doctors noted damage to his scrotum including a hematoma and laceration. An operation was required and the Applicant's left testicle was removed. Later that day the investigator, acknowledging that the Applicant had been injured in the earlier events at the police station, released him from custody.

On 30 April 2004, the Applicant took allegations of torture and beatings to the Prime Minister, General Prosecutor and Heads of the National and Regional Police. On the same date the Armenian Ombudsman who had been following the case wrote to the General Prosecutor and Head of National Police to say there was evidence of "cruel, inhuman or degrading treatment". In May 2004, the Applicant's criminal prosecution was taken over by the District Prosecutors office of Yerevan. The

Applicant then lodged a complaint with the District Prosecutor in June 2004. Despite these complaints, coupled with evidence of the Applicant's injuries recorded by medical experts, no assessment was made of the alleged acts of the police officers and the Applicant's complaint was dismissed on 7 June 2004.

Later in September 2004 a decision was taken by the District Prosecutor to end the criminal proceedings against the Applicant. This decision only referred to the police version of the events and concluded that the police acted in self-defence when beating the Applicant and therefore were not guilty of torture. Furthermore, while the Prosecutor did not find the Applicant innocent of the charges brought against him, he justified the decision not to prosecute on the basis that the incurable injuries he suffered at the hands of the police were adequate punishment for his alleged crime. The Applicant appealed through the judicial system on the basis that the police officers had escaped criminal responsibility and insufficient investigation had been carried out. His appeals were ultimately unsuccessful and the Applicant brought his case to the ECtHR.

3. Law

National laws:

- Articles 15, 19 and 41 of the Constitution of 1995
- Article 11, Articles 128-130 and other of the Code of Criminal Procedure
- The Criminal Code
- The Code of Administrative Offences

Regional laws:

- Articles 3, 6 and 14 European Convention on Human Rights (ECHR)

4. Legal Arguments

Applicant's Arguments

The Applicant argued that he had been subjected to torture in police custody because of his political beliefs, in breach of Articles 3 and 14 of the ECHR. He stated that the evidence showed beyond reasonable doubt that he had sustained injuries in police custody and that the government had failed to adequately explain them. He alleged that, despite his timely and detailed complaints, inadequate investigations had followed and he said the circumstances of his custody, including being interviewed without a lawyer, showed a lack of concern for safeguarding against abuse. He alleged that the investigator was not impartial and that there was a failure to transfer investigatory powers to an impartial authority. He also pointed to previous evidence of the risk in Armenia of torture or ill-treatment faced by those in custody.

The Applicant also alleged that the termination of the criminal proceedings by way of a "final decision" violated his Article 6 right to a presumption of innocence, as it was capable of establishing or implying his guilt.

Respondent's Arguments

The Respondent argued that the Applicant's injuries were the result of an incident which he provoked. Accordingly, it argued that he had not been subjected to ill-treatment in violation of Article 3 when in police custody. It went on to argue that it had discharged its procedural obligations to investigate his allegations of Article 3 violations and stated that the Applicant's allegations had received a prompt and due response with an open investigation being conducted.

In response to the Applicant's allegation that the treatment was discriminatory and was because of his political beliefs, the government argued that he had not provided any evidence to substantiate this

allegation and he had not proved that he had received different treatment compared to anybody in an identical situation.

The Government argued that there had been no violation of Article 6 as the decision not to continue with the criminal proceedings was a procedural one and did not contain a statement as to the Applicant's guilt.

5. Decision

Article 3

The court held that there had been both a substantive and a procedural violation of Article 3. As to the first, the court reiterated the absolute nature of Article 3 and the fact that whether the treatment is severe enough to fall within the scope of Article 3 depends on all the circumstances of the case. The court also repeated its previously expressed view that any recourse to physical force against a person deprived of his liberty, which is not strictly necessary, diminishes human dignity and is in principle an infringement of Article 3. It went on to state that when injuries occur during detention "strong presumptions of fact will arise in respect of [those] injuries" and the authorities will be required to provide a "satisfactory and convincing" explanation. In the current case, however, the explanation was "highly dubious and implausible".

In categorising the particular treatment inflicted, the court described it as "particularly cruel" and as causing "severe physical and mental pain and suffering". Furthermore, the court held it could be inferred that the treatment was inflicted by the police in order to punish or intimidate the Applicant. Accordingly, the treatment constituted torture.

As to the allegation of a procedural violation of Article 3, the court reiterated the state's obligation to carry out an official investigation when a claim of ill-treatment by the police has been raised. It outlined that the investigation must be thorough; include reasonable steps to enable the securing of evidence; be expedient; and be both institutionally and practically independent. In this case, the court noted a catalogue of shortcomings in the investigation:

- it was based solely on the version of events given by the police officers and was premised on the basis that this version was fact;
- its purpose had been the prosecution of the Applicant and not the investigation of his allegations or identification and punishment of these responsible;
- it contained serious omissions and discrepancies which were overlooked, undermining its reliability;
- the manner in which the Applicant's forensic medical examination was conducted was of particular concern with the court concluding that "the authorities failed to secure a timely, proper and objective collection and assessment of medical evidence vital for the effective outcome of the investigation";
- there was a failure to prevent possible collusion by the police by immediately isolating and questioning each officer;
- no attempt was made to question the Applicant's state-appointed lawyer who was present during the events at the police station;

Overall, the court concluded that the investigation into the allegations of ill-treatment was "ineffective, inadequate and fundamentally flawed" and constituted a procedural violation of Article 3.

Article 14

In considering the allegations that the Article 3 violations were committed due to discrimination against the Applicant because of his political opinions, the ECtHR stated that:

Political pluralism, which implies a peaceful co-existence of a diversity of political opinions and movements, is of particular importance for the survival of a democratic society based on the rule of law, and acts of violence committed by agents of the State which are intended to suppress, eliminate or discourage political dissent or to punish those who hold or voice a dissenting political opinion pose a special threat to the ideals and values of such society.

The court stated that “there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment” in relation to a potential breach of Article 14 and that “proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact”.

The court first concluded that, given that the Applicant's arrest took place during a period of political sensitivity at a time when there was an administrative practice in Armenia of preventing opposition activists from taking part in demonstrations or punishing them for having done so and also the fact that the Applicant was an active member of the opposition, the court was able to draw “sufficiently clear and concordant inferences” that the real reason for the Applicant's arrest was his participation in opposition demonstrations.

However, this did not automatically mean that the torture was committed against him because of his political opinions. The court stated that it did not have sufficient evidence to draw such a conclusion. Importantly, the court noted that although in previous cases of alleged discrimination (e.g. *Nachova and others*) the Court had required the government to disprove an arguable allegation of discrimination where a violent act has taken place in custody, this approach was “difficult to transpose to a case where it is alleged that an act of violence was politically motivated”. In the present case, the court noted that the police officers had allegedly made politically related comments, but also said it was possible that the violence was in retaliation to the Applicant's aggressive behaviour. Although the circumstances of the Applicant's politically motivated arrest raised “serious concerns”, this in itself was not sufficient to conclude that “the ill-treatment *per se* was similarly inflicted for political motives”. Accordingly, the court found no violation of Article 14 taken together with the substantive limb of Article 3.

Turning to whether the procedural breach of Article 3 was discriminatory, the court held that it was. It found that the government had failed to satisfactorily investigate the alleged political motives for the Applicant's ill treatment. The court, applying reasoning from previous cases related to violence alleged to be racially motivated (e.g. *Nachova and others*), noted that when investigating violence, states have an additional duty to “take all reasonable step to unmask any political motive and to establish whether or not intolerance towards a dissenting political opinion may have played a role in the events.” To treat politically motivated violence on an equal footing with cases which have no political overtones “would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights” and would amount to a failure to treat distinct situations differently in a way which is unjustified under Article 14.

In relation to the application of this test, the court acknowledged that investigating political motives would be difficult but stated that the government in this case had not used its “best endeavours” as it had only asked two of the police officers involved as to the Applicant's status as an opposition member and had not probed the point in any detail. This was despite the “plausible information” before the authorities sufficient to alert them to the need to investigate potential political motives. Accordingly the court found that there had been a breach of Article 14 taken together with the procedural element of Article 3.

Article 6

The court also noted that the decision to end criminal proceedings was couched in language which left no doubt as to the prosecutor's view that the Applicant had committed the offence. It held that there was a violation of the presumption of innocence under Article 6(2) of the ECHR.

