DECISION OF THE COMMITTEE OF THE EUROPEAN COURT OF HUMAN RIGHTS (FOURTH SECTION) IN CASE OF GRIGOR VOSKERCHYAN AGAINST ARMENIA

Գլխավոր տեղեկություն

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

FOURTH SECTION

DECISION

Application no. 18945/10

Grigor VOSKERCHYAN against Armenia

The European Court of Human Rights (Fourth Section), sitting on 14 December 2021 as a Committee composed of:
Tim Eicke, *President*,
Faris Vehabović,
Pere Pastor Vilanova, *judges*,
and Ilse Freiwirth, *Deputy Section Registrar*,
Having regard to the above application lodged on 18 March 2010,
Having regard to the declaration submitted by the respondent Government on 11 August 2020 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,
Having regard to the letter by the applicant's wife informing the Court of the applicant's death and of her wish to pursue the application lodged by him;
Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Grigor Voskerchyan was an Armenian national, who was born in 1956 and at the time of his death lived in Yerevan. He was represented before the Court by Mr M. Shushanyan, a lawyer practising in Yerevan.
The Armenian Government (ŧthe Government") were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.
The applicant complained under Articles 6 «« 1 and 3 (a), (b) and (d), 10 and 18 of the Convention about his prosecution and conviction. This part of the application was communicated to the Government.

THE LAW

The applicant, a member of the political opposition who was found guilty of incitement of a violent overthrow of the government and a violent change of the constitutional order in his speeches made at a political rally, complained that his conviction had violated his right to freedom of expression. He further complained that (a) the last-minute recharacterisation of the charge against him by the trial court had breached his right to be informed about the nature and the cause of the charge against him and to have adequate time and facilities for the preparation of his defence and (b) he had been denied the opportunity to question witnesses against him. He relied on Article 6 «« 1 and 3 (a), (b) and (d) and Article 10 of the Convention.
The Court notes at the outset that the applicant died on 11 April 2021, while the case was pending before the Court. The applicant's wife, Mrs Marine Harutyunyan, his heir, informed the Court in a letter of 1 September 2021 that she wished to pursue the application lodged by him. The Government did not object to this request. The Court has previously accepted that the next of kin, close family member or heir may in principle pursue the application after an applicant's death, provided that he or she has sufficient interest in the case (see Centre for Legal Resources on behalf of Valentin Campeanu v. Romania [GC], no. 47848/08, « 97, ECHR 2014, and *Ghavalyan v. Armenia*, no. 50423/08, «« 56-60, 22 October 2020). It does not see any reasons to depart from its established case-law and is prepared to accept that the applicant's wife has a legitimate interest in pursuing the application initially brought by Mr Grigor Voskerchyan. For convenience, the Court will continue to refer to Mr Voskerchyan as the applicant in the present decision.
After the failure of attempts to reach a friendly settlement, by a letter of 11 August 2020 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.
The declaration provided as follows:
''I, Yeghishe Kirakosyan, the Agent of the Government of the Republic of Armenia before the European Court of Human Rights, hereby declare that the Armenian authorities acknowledge that in the current case there has been a

violation of the applicant's rights guaranteed under Articles 6 « 1, 6 « 3 (a) (b) (d), and 10 of the Convention.

The Government acknowledging the violation of the applicant's rights, offers to pay to the applicant Grigor Voskerchyan the amount of EUR 12,150 (twelve thousand one hundred fifty euros) to cover any and all damage incurred by him as well as costs and expenses.

The above-mentioned sum will be free of any taxes that may be applicable and will be converted into Armenian drams at the rate applicable on the date of payment payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. In the event of failure to pay these sums within the said three-month period, the Government undertakes to pay simple interest on them, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

Thereof, the Government, taking notice of criteria emerging from the Court's case-law as to when it is appropriate to decide to strike out the application with reference to Article 37 « 1 (c) on the basis of the unilateral declaration made by the Government, even if the applicant wishes the examination of the case to be continued, suggests that the present declaration might be accepted by the Court as ‟any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 « 1 (c) of the Convention, and invites the Court to strike the present case out of the list of cases."

By a letter of 1 October 2020, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the Government had failed to acknowledge a violation of Article 18 of the Convention.

The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

''for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007; and *De Tommaso v. Italy* [GC], no. 43395/09, § 133, 23 February 2017, concerning a request to strike out part of an application).

The Court has established in a number of cases its practice concerning complaints about the violation of the rights guaranteed by Article 6 §§ 1 and 3 (a), (b) and (d) and Article 10 of the Convention (see, for example, *Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 51-54, ECHR 1999-II; *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 110-31, ECHR 2015; and *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, §§ 58 and 61, ECHR 1999-IV)

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the case out of the list in so far as it relates to the above complaints.

Relying on Article 18 of the Convention the applicant also complained that he had fallen victim to political persecution and been convicted on trumped-up charges.

Having regard to all the evidence in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 6 §§ 1 and 3 (a), (b) and (d) and Article 10 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike that part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 20 January 2022.

Ilse Freiwirth	**Tim Eicke**
Deputy Registrar	**President**