

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

FOURTH SECTION

CASE OF ARSENYAN v. ARMENIA

(Application no. 45197/14)

JUDGMENT

STRASBOURG

31 January 2023

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



In the case of Arsenyan v. Armenia,

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

Anja Seibert-Fohr*, President*,
Armen Harutyunyan,
Ana Maria Guerra Martins*, judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 45197/14) 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 11 June 2014 by an Armenian national, Mr Armen Arsenyan, born in 1969 and detained in Yerevan ("the applicant") who was represented by Mr R. Revazyan, a lawyer practising in Yerevan;

the decision to give notice of the application to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters;

the parties' observations;

Having deliberated in private on 10 January 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's alleged ill-treatment and the alleged lack of an effective investigation. It raises issues under Article 3 of the Convention.

2. On 26 April 2013 the applicant was taken to Arabkir Police Station upon suspicion of having committed a robbery where he was allegedly beaten by several police officers aiming to extract a confession. That night the applicant was transferred to police holding cells where, at the time of admission, his body was inspected for injuries by a feldsher and two police officers. The Government alleged, which the applicant disputed, that no injuries had been discovered. On 27 April 2013 the applicant was taken back to the police station where his alleged ill-treatment continued.

3. On 29 April 2013 the applicant, while in police custody, was questioned by a police investigator of the Arabkir Investigative Department investigating the criminal case against the applicant. The applicant denied his involvement in the robbery.

4. On 30 April 2013 the applicant was transferred to Nubarashen Remand Prison following a court order to detain him. At the time of admission the applicant was examined by the remand prison's doctor, G.A., who noted the following injuries: "bluish bruises on the front surface of both shins". The applicant stated that the injuries had been inflicted at Arabkir Police Station.

5. On 2 May 2013 the remand prison sent a notification of the applicant's injuries and allegations to the General Prosecutor's Office ("the GPO") which received it on 6 May 2013. On 8 May 2013 the GPO forwarded the notification to the Special Investigative Service ("the SIS") which received it on 13 May 2013. On 16 May 2013 the SIS investigator took a statement from the applicant who accused four senior and two junior rank police officers of ill-treatment. He alleged that, after taking him into custody, the police officers had tried to force him to confess to the robbery and would start beating him each time he would refuse, punching and kicking him in various parts of his body. His legs had been bruised and badly aching and he had received strong blows to the back and ribs. On the same date the investigator ordered the applicant's forensic medical examination.

6. On 18 May 2013 the forensic medical expert examined the applicant and recorded two grey, blue and crimson coloured "areas" on the lower parts of both shins, as well as two scratches on various parts of the legs.

7. The investigator took statements from the feldsher and the two police officers of the police holding cells. They submitted that no injuries had been detected on the applicant's body at the time of his admission to the holding cells. Statements were apparently also taken from the four senior police officers of the Arabkir Police Station who denied having ill-treated the applicant.

8. On 1 June 2013 the forensic medical expert produced his conclusion, finding that the two scratches were too fresh and did not date back to the period in question, whereas the coloured "areas" on the applicant's shins were not injuries and had resulted from changes associated with malnutrition. In reaching this conclusion, the medical expert took into account a statement allegedly taken from remand prison doctor G.A. by the investigator about one week earlier. During that interview G.A. was allegedly told by the investigator that the applicant's forensic medical examination conducted on 18 May 2013 had revealed grey, blue and crimson coloured malnutrition "areas" which had resulted from vascular problems, and was asked to explain whether, given that finding, the "bruises" recorded by him at the time of the applicant's admission to the remand prison had resulted from malnutrition or injury. G.A. replied that, after having seen the bruises, he had understood that they had been the consequence of changes associated with malnutrition which could have been due to vascular issues. However, since the applicant alleged ill-treatment in police custody, he had recorded also that allegation.

9. On 14 June 2013 the SIS investigator refused to institute criminal proceedings and to prosecute the police officers, finding the applicant's allegations to be unsubstantiated. In doing so, he relied on several pieces of evidence, namely the statements provided during the inquiry (see paragraph 7 above), the conclusion of the forensic medical expert (see paragraph 8 above) and the fact that the applicant had not raised any allegations of ill-treatment during his questioning on 29 April 2013 (see paragraph 3 above).

10. The applicant's appeals against the investigator's decision were dismissed by the domestic courts.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

11. The Court notes that this 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.

12. The general principles concerning the prohibition of ill-treatment and the obligation to carry out an effective investigation of such allegations have been summarised in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90, 100-01 and 114-23, ECHR-2015).

13. In the present case, the Government argued that the applicant had not been subjected to ill-treatment in police custody and explained his injuries with reference to the results of the investigation conducted by the authorities.

14. The Court notes that the investigation into the applicant's allegations of ill-treatment terminated with the investigator's decision refusing to institute criminal proceedings concluding that the applicant's "injuries" were in fact not injuries but a condition resulting from vascular problems (see paragraph 9 above).

15. Having regard to the evidence relied on by the investigator in reaching this conclusion and, in particular, to the conclusion of the forensic medical examination which revealed on the applicant's legs coloured "areas" resulting from malnutrition but no injuries (see paragraph 8 above), the Court cannot overlook the fact that that examination was conducted with a delay of 18 days after the applicant's "injuries" had been first revealed (see paragraph 4 and 6 above), which itself had taken place three days after the alleged "injuries" had been sustained (see paragraph 2 above). It is not for the Court to speculate whether the "bruises" recorded at the time of his admission to the remand prison (see paragraph 4 above) and the malnutrition "areas" recorded by the forensic medical expert 18 days later (see paragraph 8 above) referred to one and the same medical condition, but such a significant delay in conducting the forensic medical examination puts into doubt the credibility of its findings. Clearly, a prompter response from the authorities was vital in this situation, which they failed to do without any justifiable reasons despite the risk of delay resulting in loss of evidence.

16. Furthermore, the investigation failed to provide a convincing explanation as to how it was possible for G.A., who was apparently a qualified doctor, to mistake "areas" associated with malnutrition for "bruises" (see paragraph 4 above). As regards the statement allegedly provided by G.A. where he appears to have backtracked on his earlier findings, the Court notes firstly that there is no record of that interview in the case file and the only

reference to it is contained in the forensic medical expert's conclusion (see paragraph 8 above). In any event, even assuming that such a statement was indeed given by G.A., the Court notes that the record of the applicant's medical examination at the remand prison refers to the condition identified on his legs as "bruises" and contains no mention of malnutrition or vascular problems. The Court does not find G.A.'s explanation as to why he recorded the applicant's condition as "injuries" and "bruises", while allegedly being of the opinion that the applicant was in fact suffering from vascular problems, to be convincing, especially that that interview – as presented in the forensic medical expert's conclusion (see paragraph 8 above) – gives an impression of, if not being guided, at least being influenced by the investigator.

17. As regards the alleged inspection of the applicant's body at the time of his admission to the police holding cells (see paragraph 2 above), the Court notes at the outset that there is no record of that alleged inspection. The interviews conducted with the feldsher and the two police officers who had allegedly performed that inspection amounted to a one page document each (see paragraph 7 above) and did not give the impression of a serious attempt by the investigator to clarify the relevant circumstances, including the reasons for the absence of any record of the alleged inspection. Nor is it clear how the interviewees knew the applicant's identity given that no confrontations were conducted between them and the applicant or the fact that neither he nor his photo had ever been presented for identification. The impartiality and the credibility of the alleged inspection is also open to doubt, taking into account that it was conducted in the presence, or possibly even with the participation, of two police officers. Given the lack of any details, it does not resemble a real medical examination either.

18. The Court further notes that the Government have failed to provide copies of the interviews allegedly conducted with the police officers of the Arabkir Police Station (see paragraph 7 *in fine* above), which prevents it from assessing the adequacy of those investigative measures. In any event, the Court doubts that the officers in question could be considered as impartial witnesses.

19. Lastly, the Court disagrees with the investigating authority's assessment of the fact of failure by the applicant to report his ill-treatment at the interview of 29 April 2013 (see paragraph 3 above). It notes that this interview was conducted while the applicant was still in police custody and could have justifiably feared retaliation. Furthermore, the investigator who conducted that interview apparently had a hierarchical and institutional connection with the police officers of the Arabkir Police Station and was, moreover, entrusted with the investigation of the criminal case against the applicant. He therefore lacked the requisite independence, this being another potentially discouraging factor.

20. The aforementioned is sufficient for the Court to conclude that the authorities failed to conduct an effective investigation into the applicant's

allegations of ill-treatment and that their explanation of the applicant's injuries cannot be considered sufficient, convincing and credible.

21. There has accordingly been a violation of Article 3 of the Convention in its substantive and procedural limbs.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. He did not claim any costs and expenses.

23. The Government did not comment on the applicant's claim.

24. The Court awards the applicant 10,000 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 10,000 (ten 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.

Done in English, and notified in writing on 31 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolsecu	Anja Seibert-Fohr
Acting Deputy Registrar	President