

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

FOURTH SECTION

CASE OF HAKOBYAN v. ARMENIA

(Application no. 11222/12)

JUDGMENT

STRASBOURG

29 March 2022

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



In the case of Hakobyan v. Armenia,

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

Jolien Schukking, *President,*
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 11222/12) 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 10 February 2012 by an Armenian national, Mr Artur Hakobyan, born in 1981 and living in Yerevan ("the applicant") who was represented by Ms L. Sahakyan and Mr Y. Varosyan, lawyers 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 8 March 2022,

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

SUBJECT-MATTER OF THE CASE

1. The applicant was involved in an altercation with the police, after which he was taken to a police station where, immediately upon arrival, he was allegedly beaten by four police officers in the duty unit of the station. A criminal case was initiated against the applicant who was charged with assaulting the police but, after its transfer from the police to the Special Investigative Service (SIS), the case was dropped and the four police officers were charged with the applicant's ill-treatment. Their case went to trial which ended with their acquittal by the domestic courts on the ground that the evidence obtained was not sufficient to conclude that the applicant's injuries had been sustained specifically at the police station as a result of his ill-treatment. After the acquittal was upheld by the final judicial instance on 6 October 2011, the investigation into the circumstances of the applicant's injuries was resumed, for the purpose of "identifying those responsible", and was pending at the time of introduction of the present application.

2. The applicant complained under Article 3 of the Convention about his ill-treatment and the lack of an effective investigation.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

3. The Court rejects the Government's objection that the application is premature because the investigation was still pending when it was lodged. The applicant was justified in seizing the Court within six months from 6 October 2011, namely the date of completion of the criminal proceedings against the four police officers whom the applicant had indicated as the alleged perpetrators of his ill-treatment and the fact that the investigation was thereafter resumed is irrelevant. For the same reasons, the Court does not consider that the applicant abused his right of individual petition, as claimed by the Government, because of failing to inform the Court of the resumption of the investigation.

4. 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.

5. 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).

6. In the present case, about one day after being taken into police custody the applicant was subjected to a physical examination at the time of his admission to a police temporary holding facility and found to have a number of injuries. During his one-day stay at the police station and prior to his transfer to the temporary holding facility an ambulance was called to provide first aid to the applicant who was taken to a hospital where he complained of pain in the chest and back and alleged to have been ill-treated. He was further examined by a forensic medical expert who confirmed his injuries, including bruises on his face and body and a nose deformation. Following his release from police custody which lasted about three days, the applicant was admitted to a hospital with a nose-fracture diagnosis and underwent surgery on his nose, although the forensic medical expert later concluded that the nose fracture was an old injury not linked to the events which had taken place on the day of the incident.

7. The Government alleged that the applicant's injuries had been sustained prior to his arrival at the police station, most likely because of showing resistance during his arrest. They failed, however, to substantiate this allegation with any evidence. Firstly, there is no evidence that the applicant already had injuries when entering the police station since, as already noted above, his first physical examination was conducted only about one day after having been taken into custody. Secondly, the Government's allegation that force was applied to the applicant who resisted arrest is speculative and not supported by the materials of the case. There was no such

finding ever reached at the domestic level. Moreover, no report was filed at the material time by the arresting police officers about any injuries sustained by the applicant during his arrest as required under section 29 of the Police Act (see *Mushegh Saghatelyan v. Armenia*, no. 23086/08, § 122, 20 September 2018), whereas the criminal case against the applicant for alleged assault on the police was dropped for lack of evidence. It is true that later in the investigation the forensic medical expert concluded, as regards specifically the applicant's nose fracture, that it was an old injury not linked to the events which had taken place on the day of the incident. This fact, however, is not decisive since the applicant had also a number of other injuries, including bruises on his face and body.

8. In view of the above, the Court considers that the Government have failed to provide a plausible explanation for the applicant's injuries. In particular, it has not been shown that his injuries were the result of a use of force that had been made strictly necessary by his conduct (see *Bouyid*, cited above, § 100). The Court therefore concludes that the applicant has suffered inhuman and degrading treatment within the meaning of Article 3.

9. As regards the official investigation, the authorities initially reacted swiftly by ordering and conducting the applicant's forensic medical examination on the same day when the applicant testified to the investigator about his alleged ill-treatment. However, no further investigative measures were taken until the first questioning of a witness about two months later, and it was not until about seven months later that the criminal case against the applicant was dropped and a new case was instituted against the four police officers who had allegedly ill-treated him. It is notable that during that entire period only four witness interviews were conducted. The applicant was recognised as a victim and questioned about his alleged ill-treatment only after the institution of the new criminal case. In the light of the above, it cannot be said that the investigation was prompt and adequate, as required by Article 3, and, clearly, such serious flaws were capable of undermining its effectiveness.

10. 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

11. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

12. The Court awards the applicant 12,000 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable.

13. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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 in its substantive and procedural limbs;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 12,000 (twelve 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Jolien Schukking President