

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

THIRD SECTION

CASE OF VIRABYAN v. ARMENIA

(Application no. 40094/05)

JUDGMENT

STRASBOURG

2 October 2012

FINAL

02/01/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Virabyan v. Armenia**,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 40094/05) 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") by an Armenian national, Mr Grisha Virabyan ("the applicant"), on 10 November 2005.

2. The applicant was represented by Ms L. Claridge, Mr M. Muller, Mr T. Otty and Mr K. Yildiz, lawyers of the Kurdish Human Rights Project (KHRP) based in London, Mr T. Ter-Yesayan, a lawyer practising in Yerevan, and Mr A. Ghazaryan, a non-practising lawyer. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicant alleged, in particular, 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 the criminal proceedings against him had been terminated violated the presumption of innocence and that his ill-treatment had been motivated by his political opinion.

4. On 10 September 2008 the President of the Third Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Shahumyan Village, Ararat Region of Armenia.

A. Background to the case

6. The applicant was a member of one of the main opposition parties at the material time in Armenia, the People's Party of Armenia (PPA).

7. In February and March 2003 a presidential election was held in Armenia. The applicant acted as an authorised election assistant (*վստահված անձ*) for the PPA candidate who was the main opposition candidate in the election. Following the election, which was won by the incumbent President, the international election observation mission concluded that the overall election process fell short of international standards. It appears that mass protests followed. The PPA candidate challenged the election results in the Constitutional Court, which on 16 April 2003 recommended that a referendum of confidence in the re-elected President be held in Armenia within a year.

8. As the April 2004 one-year deadline approached, the opposition stepped up its campaign to challenge the legitimacy of the re-elected President and began to hold rallies around the country to express its demands. Numerous rallies were held in March and April 2004 and the applicant appears to have participated in them. He alleged that the authorities had retaliated by arresting and harassing opposition supporters, including himself. According to him, during this period the local police officers visited on a daily basis his home in Shahumyan village where his mother lived, with the intention of taking him to the police station. He was forced to stay away from home and to hide in Yerevan.

9. On 12 April 2004 a rally was organised by the opposition parties which took place on Freedom Square in Yerevan and was followed by a march towards the presidential residence. Between 10,000 and 15,000 people attended the rally, including the applicant. It appears that the police eventually dispersed the crowd at around 2 a.m. on 13 April 2004.

B. The applicant's arrest and alleged ill-treatment

1. The circumstances of the applicant's arrest of 23 April 2004

10. According to the police materials, on 23 April 2004 at 5.05 p.m. an anonymous telephone call was received at the Artashat Police Department alleging that the applicant, while attending the demonstration of 12 April 2004, had been carrying a firearm which he still had on him. Two police officers, R.S. and A.S., were ordered to bring the applicant to the police station.

11. According to the record of taking the applicant to the Artashat Police Department, the applicant was taken there on 23 April 2004 at 5.40 p.m. on suspicion of carrying a firearm and for using foul language towards police officers and not obeying their lawful orders. It was noted that the applicant refused to sign the record.

12. At 5.50 p.m. the applicant was subjected to a search by the arresting police officer R.S. and another police officer, A.M., in the presence of two witnesses, during which a mobile phone and a lighter were found. The record of the applicant's search similarly noted that the applicant refused to sign it.

13. Both arresting police officers, R.S. and A.S., reported to the chief of police that the applicant had used foul language during his arrest. In particular, the applicant had said "I have had enough of you! What do you want from me? Why have you come here? Who are you to take me to the police station?" They further reported that he had made a fuss and disobeyed their lawful orders but they had somehow managed to place him in the police car. On the way to the police station he had continued using foul language, saying that he would have them all fired and that they would be held responsible for this.

14. The applicant contests this version of events and alleges that he was stopped near his home by police officers R.S. and A.S. between 2 p.m. and 3 p.m. They asked him to accompany them to the police station, explaining that the chief of police wanted to have a talk with him. He agreed and got into the police car without any resistance. At the police station he was taken to the office of another police officer, H.M., who asked him questions about his participation in demonstrations and about a fellow opposition activist, G.A., who had been arrested some days before. Thereafter he was taken to the office of deputy chief of police G., who said that he was using foul language and ordered that an administrative case be prepared. He was then taken to another office where police officer A.M. started preparing the administrative case. He was never subjected to a search.

15. Police officer A.M. drew up a record of an administrative offence in which it was stated that the applicant had disobeyed the lawful orders of police officers and used foul language, which constituted an offence under

Article 182 of the Code of Administrative Offences (CAO). He further drew up a record on taking an explanation which stated that the applicant had refused to make a statement. Both records noted that the applicant had refused to sign them.

16. The applicant alleges that, after police officer A.M. had finished preparing the materials of the administrative case, he said that those materials would be taken to a court and it would be better for somebody to intervene otherwise the applicant risked 15 days in detention. Then the two had a short conversation, during which the applicant said, *inter alia*, that he had been brought to the police station because of his participation in demonstrations, such arrests being carried out upon the instructions of the President of Armenia. Then police officer A.M. left the office.

17. The applicant further alleges that, some minutes after police officer A.M. had left the office, police officer H.M. entered and started swearing at him. Police officer H.M. then approached him and kicked him on the left side of his chest and punched him in the face. The applicant grabbed the mobile phone charger which was on the desk and hit police officer H.M. Having heard the noise of the scuffle, three other police officers entered the office and took him to another room. About ten minutes later police officer H.M. and another police officer, A.A., came to that room and started brutally beating him. After they left the room, another police officer, A.K., entered the room and started hitting him in the area of his scrotum with a metal object. He was then handcuffed and police officer A.K. continued punching and kicking him below the waist, after which he lost consciousness.

18. It appears that at some point an ambulance was called from Artashat Hospital to have the applicant checked for alcohol intoxication. According to the record of a medical examination, the applicant was examined by the ambulance doctor, A.G., at 7 p.m. and the test results showed that there were signs of alcohol intoxication. The applicant alleges that in reality the ambulance doctor was called to check his level of alcohol intoxication at 3.05 p.m. (see also paragraph 66 below). A police officer, A.H., who assisted in the check-up, punched him four times in the face and once below his waist.

19. At an unspecified hour arresting police officer R.S. reported to the chief of police the following:

> "During the preparation of materials on an administrative offence in respect of [the applicant] who was brought to the police station on the basis of the information received from an unknown citizen on 23 April 2004 at 5.05 p.m. [the applicant] behaved cynically, obscene and self-confident, using foul language towards the police officers and refusing to sign the prepared documents. And when [the applicant] found out that the materials prepared in his respect would be submitted to a court for examination, he took a mobile phone charger from the desk and hit the head of the criminal investigation unit [H.M.] in the face with it, swearing at him and saying that it was he who had fabricated everything, after which [the applicant] attempted to hit

him a second time with a telephone that was on the desk but he was prevented from doing so by me and [police officers A.A. and A.M.]."

20. It appears that police officer A.A. made a similar report. It further appears that police officer H.M. was taken to hospital.

21. At an unspecified hour investigator M. of the Ararat Regional Prosecutor's Office decided to institute criminal proceedings no. 27203404 under Article 316 § 1 of the Criminal Code (CC) on the ground that the applicant had used force against a public official by hitting police officer H.M. and thereby inflicting injuries not dangerous for health. This decision was taken on the basis of the materials submitted by the Artashat Police Department and contained an account of events similar to that contained in the above police reports.

22. Investigator M. then took witness statements from police officer A.M. and arresting police officers R.S. and A.S.

23. Police officer A.M. stated that, when the applicant refused to make a statement in connection with his administrative case, there were three other police officers present in the office apart from himself and the applicant, namely police officers R.S., A.A. and H.M. Seeing that the applicant was refusing to make a statement, police officer H.M. told him that he would have to be taken to a court. On hearing that, the applicant exclaimed "It is you who have fabricated everything", grabbed the mobile phone charger from the desk and hit police officer H.M. in the face. Immediately thereafter the applicant reached for the telephone that was on the desk but police officer A.A. managed to grab the telephone from him. Then the applicant went towards police officer H.M., they grasped each other and, while pushing each other, they fell on the chair standing beside the desk, which collapsed. The applicant was lying on the floor and police officer H.M. was lying on him. A.M. – together with police officers A.A. and R.S. – immediately picked them up. The applicant was then taken to another office, while police officer H.M. was taken to hospital. In reply to the investigator's question, police officer A.M. stated that the police officers had been very polite and to-the-point with the applicant. He had not been made aware of the applicant's political affiliation and the only thing he had learned from him was that he was a friend of the PPA candidate. In reply to the investigator's second question, police officer A.M. stated that none of the police officers had hit or beaten the applicant at the police station before or after the incident.

24. Arresting police officer R.S. made a similar statement. In reply to the investigator's question as to whether any of the police officers had hit or beaten the applicant at the police station or prior to taking him there, police officer R.S. stated that none of the police officers had hit or beaten the applicant. To the contrary, taking into account his behaviour and his statements about changing the government, the police officers had been careful and correct with him in order to avoid any unnecessary

conversations. In reply to the investigator's second question, police officer R.S. stated that he had not been made aware of the applicant's political affiliation and the only thing he had learned from him was that he was a friend of the PPA candidate.

25. Arresting police officer A.S. stated, *inter alia*, that he was away at the time of the incident. He further stated that he had found out about the reasons why the applicant had been brought to the police station only after bringing him there. No questions were posed by the investigator.

26. Investigator M. examined the scene of the incident and drew up a relevant record which included photographs of the broken chair.

27. At 9.45 p.m. investigator M. drew up a record of the applicant's arrest which stated that the applicant had been arrested at that hour on suspicion of having inflicted violence not dangerous for health on police officer H.M. at around 6.30 p.m. at the Artashat Police Department.

28. At 10 p.m. investigator M. questioned the applicant as a suspect. According to the record of the suspect's questioning, the applicant stated that he was unable to testify at that moment and would make a statement the next morning. It appears from the record that the applicant's State-appointed lawyer was present at this questioning.

29. According to a record drawn up by another police officer, O.B., at an unspecified hour the applicant felt sick and asked for a doctor. An ambulance was called. The ambulance doctor A.G., having heard the applicant's complaints, advised an in-patient examination since his complaints could be examined only with special equipment. It appears that this visit took place at 11.20 p.m. It further appears that the applicant was taken to Artashat Hospital by several police officers but was not allowed to stay there despite the doctor's recommendations. The applicant spent that night in a cell at the police station.

2. The applicant's transfer to hospital and his operation on 24 April 2004

30. On 24 April 2004 at 11.20 a.m. the applicant was taken from the police station to Artashat Hospital, where he underwent a medical examination and was then taken to the surgical unit.

31. According to the surgeon's certificate dated 24 April 2004, the applicant was brought to the hospital's surgical unit with the following initial diagnosis: "Post-traumatic hematoma of the scrotum, hematocele of the left testicle, laceration?" Surgery was carried out on the applicant's scrotum. During the surgery the left testicle was found to be lacerated and crushed with decomposition of tissue and with a large amount of accumulated blood (about 400 mg). The applicant's left testicle was removed. Following the surgery, in-patient treatment was recommended. The certificate further stated that in the post-surgical period the applicant was not able to testify or to answer questions.

32. It appears that on the same date the applicant's chest was X-rayed at the hospital.

33. Later that day investigator M. decided to release the applicant from custody. The investigator's decision described the circumstances of the incident as presented in the above police materials and added that "[the applicant] had also been injured during the incident" and taken to hospital. Taking into account that the applicant needed in-patient treatment, there was no need to keep him in custody.

34. Investigator M. also ordered that both the applicant and police officer H.M. undergo a forensic medical examination. This decision stated, *inter alia*, that it had been established by the investigation that the applicant, who had been taken to the police station on suspicion of carrying a firearm, had inflicted injuries on police officer H.M. by hitting him with a mobile phone charger. As a result of the incident, the applicant had also been injured. The expert was asked to answer the following questions in respect of the applicant's injuries:

> "- What kind of physical injuries are there on [the applicant's] body[? C]larify their nature, location, method of infliction, age and degree of severity.
>
> - Was the injury to [the applicant's] testicle caused by a blow or by an illness?
>
> - If the injury to [the applicant's] testicle was caused by a blow, was it caused by one or several blows?"

35. On the same date the investigator took a witness statement from police officer H.M. He submitted that following the anonymous telephone call, deputy chief of police G. had immediately called police officers R.S. and A.S. to his office, informed them about the information received and ordered them to bring the applicant immediately to the police station. After about 30 minutes they had returned with the applicant. Police officer R.S. reported that in the village and on the way to the police station the applicant had used foul language, threatened and used insulting expressions towards the police. Police officer H.M. had then spoken to the applicant and asked him to give up voluntarily his firearm. The applicant denied ever having any firearm and said that he had participated and would continue to participate in demonstrations. He had then continued using foul language, saying that the police officers' days in office were numbered and that the government would be changed soon. Police officer H.M. went on to describe how he and other police officers started preparing an administrative case against the applicant under Article 182 of the CAO and the manner in which the later incident took place, providing an account of events similar to that given by other police officers (see paragraphs 23 and 24 above). No questions were posed by the investigator.

3. The first allegations of ill-treatment and other developments

36. On 25 April 2004 the applicant was questioned as a suspect at the hospital by investigator M. and made the following statement:

> "...I am a member of the PPA party and I have lately participated in demonstrations organised by that party. On 23 April 2004 at around 4 p.m. I was coming home from my aunt's place when I noticed a car parked next to our house. The car moved and our paths met not far from my house. I saw our [local policeman R.S.] together with one of our district inspectors whom I did not know. They stopped and started talking to me. [R.S.] said that they were coming for me and that the chief (meaning the chief of police) wanted to have a talk with me. I answered that if I came to the police department they would keep me "overnight", taking into account the fact that the same had happened before to my friends. [R.S.] promised me that no such thing would happen and I agreed to go with them. We went together to the police. I and [R.S.] went up to the second floor. After waiting for a moment next to his office, he took me to the Head of the Criminal Investigation Unit [H.M.]. There [H.M.] started talking and said "Grisha, what is this all about the demonstrations you are holding and the government you are changing? You are upsetting the stability of the country" and things like that[. H]e also said that I had taken people to the demonstrations and added that I had taken with me, for instance, [G.A.]. I asked whether [G.A.] could come and prove that I had taken him to the demonstrations and added that he had his own brain to decide what to do. [H.M.] left the office telling me that he would be back soon. A little while later I was invited to go to the office of the deputy chief of police [G.]. When I entered [G.'s] office he asked me why I was talking loudly in the hallway and why I was organising a demonstration in the building [of the police station]. I answered that I had not been in the hallway and had not organised any demonstration. [G.] said that I was using foul language to him there and then and ordered that a case be prepared on account of my committing an administrative offence. I and [R.S.] came back to his office where he, in the presence of [another police officer, A.M.], said that he would not prepare materials against me and left the room. A little while later [A.M.] was called[. H]e went away, then returned and started preparing some documents. He inquired about my personal details but I refused to say anything and only said that I had higher education. A little while later [H.M.] came. [A.M.] told him that I refused to provide any information about myself. He ordered [A.M.] to go and bring form no. 1. [A.M.] left and came back with a piece of paper on which I could see my photo. [A.M.] filled in some documents and asked me to sign them[. I] answered that I would not sign any documents. At that moment a girl came to [A.M.'s office]. He told the girl to type a court document. [A.M.], apparently having finished filling in the documents, was about to go, probably to fetch the court document. I understood by now that I was going to be taken to a court and sentenced to an "overnight". Besides, [A.M.] also said that they were about to take me to a court and left the office. At that moment [H.M.] entered the office. I was sitting in front of one of the desks. Upon entering the office he immediately started swearing at me, also saying that it was their country and that they could do anything they wanted to and that what we were trying to do, meaning the change of the government, was all in vain. I answered: "You do what you think is right and we will do what we consider to be right"[. A]t that moment [H.M.] kicked me. The blow fell on the left side of my chest. He kicked me with the sharp tip of his shoe. I felt sharp pain in the area of my ribs. He immediately punched me twice in the face with his left fist. At that moment I lost my temper and to defend myself picked up the mobile phone charger from the desk and hit him with it. The cable stayed in my hand while the charger broke off and hit [H.M.'s] face. I saw him holding his eye and screaming. At that moment [A.M.]

> entered the office and, seeing the chaotic situation, took me to the nearby office. [H.M. and another police officer, A.A.,] followed me there and started beating me. I fell down but they went on beating me. They were kicking and punching me. Then other officers came and took [H.M. and A.A.] out. I would like to indicate that at the very beginning both [H.M. and A.A.] kicked me on my testicles. Some while after [H.M. and A.A.] had been taken away from the office, [another police officer A.K.] came to the office [(I learned his name and position from other officers after the incident)] and started swearing at me, trying to humiliate me, twice spat on me and punched my testicles[. Then] he kicked my feet several times and left. Before leaving he hit me again on my testicles with his keys. [A.K.], before beating me in the office, ordered everybody to leave, saying that he was going to abuse me. After he left [A.A.] entered the office and started beating me again, demanding that I stand upright. He was hitting and saying "Hit back! Why don't you hit back now?" Some time later an ambulance doctor came to check whether I was drunk. I told her that I was not drunk. They contacted the chief of traffic inspection and asked for an "ampoule". [Another police officer, A.H.,] brought the ampoule. The doctor broke the edge of the ampoule and I blew in it. At that time I was asserting again that I was not drunk. [A.H.] hit me on my forehead. He hit me twice on my forehead. It seemed like he wanted to show deliberately that he was defending the honour of the uniform. I was in a terrible condition[. I] asked [another police officer, M.B.,] and he gave me some water, then poured it on my head, back and face for me to regain consciousness. [Another police officer, R.H.,] also helped me; he removed my handcuffs, realising of course that I was in a bad condition..."

37. On 26 April 2004 investigator M. examined the police journal where under entry no. 153 it was stated that an anonymous telephone call had been received on 23 April 2004 at 5.05 p.m. alleging that the applicant had participated in the demonstration of 12 April 2004 with a firearm and was still carrying it.

38. On 27 April 2004 the applicant was again questioned as a suspect at the hospital by investigator M. He was asked about the kind of conversation he had had at the police station before the incident, concerning the fact that he had been carrying a firearm. The applicant replied that none of the police officers had asked him about any firearm. The only thing he had been asked about was why he was attending demonstrations and taking others with him. Such questions were asked by police officer H.M. Furthermore, while police officer A.K. was beating him, he was asking him which of the opposition leaders was encouraging his activity. The applicant also added that police officer A.K. had ordered that he be handcuffed with his hands behind his back, after which he started beating him in that position.

39. Investigator M. also took a witness statement from police officer A.A., who repeated the submissions made in his report of 23 April 2004 (see paragraph 20 above). No questions were posed by the investigator.

40. On the same date expert G. of the Ararat Regional Division of the Republican Forensic Medicine Theoretical and Practical Centre (RFMTPC) of the Ministry of Health received a copy of the investigator's decision of 24 April 2004 ordering the applicant's forensic medical examination (see paragraph 34 above).

41. On that day the Ararat Regional Court decided to grant investigator M.'s request to have the applicant's home searched, finding that there were sufficient grounds to believe that firearms could be hidden there.

42. On 28 April 2004 investigator M. decided to seize the X-ray of the applicant's chest taken at the hospital on 24 April 2004 (see paragraph 32 above).

43. On 29 April 2004 the applicant's home was searched and no firearms were found.

44. On the same date investigator M. questioned as a witness police officer H.M. The investigator asked police officer H.M. to comment on the applicant's allegations that H.M. had attacked him first and that he had been ill-treated after the incident by H.M. and police officer A.A., to which H.M. replied that the applicant was lying and denied having ill-treated him, repeating his earlier submissions (see paragraph 35 above). The investigator then asked police officer H.M. to comment on the applicant's allegation that the police officers never asked him any questions about a firearm, to which H.M. replied that the applicant had been taken to the police station on the grounds of information that he carried a firearm and the conversation with him concerned that issue. The applicant, however, would constantly change the topic to demonstrations, changing the government, the police officers' "numbered days" in office and their punishment.

45. On 30 April 2004 the applicant lodged an application with the Prime Minister with copies to the General Prosecutor and the Heads of the National and Regional Police complaining that on 23 April 2004 at around 2 p.m. he had been taken by deception to the Artashat Police Department where he had been beaten and tortured for his participation in demonstrations. He requested that the perpetrators be punished, indicating their names, which included H.M., A.H., A.K. and A.A., and citing his statement of 25 April 2004 for further details (see paragraph 36 above).

46. On the same date the Armenian Ombudsman, who had apparently visited the applicant in hospital and was following his case, wrote to the General Prosecutor's Office and the Head of the National Police, informing them of the following:

> "We have carried out an inquiry into possible human rights violations in connection with the incident that happened to [the applicant] in the Artashat Police Department on [23 April 2004].
>
> The data that we have obtained provide grounds for us to assert that acts which are qualified as "cruel, inhuman or degrading treatment" have been committed in respect of [the applicant] at the Police Department.
>
> The fact itself that [the applicant] was taken to the Town Police Department in good health then transferred to a hospital where he underwent surgery as a result of the injuries suffered shows that he was subjected to such treatment regardless of his personality and the acts he had committed just before.

> We are worried by the fact that so far the Armenian Police have not given their report of what has happened.
>
> During the conversations we had with [the representatives of] the Regional Prosecutor's Office and with the Heads of Regional and Town Police opinions were expressed, from which it can be assumed that no appropriate assessment will be given to the lack of grounds for bringing the applicant to the police station, the lack of sufficient grounds for arresting him and the institution of criminal proceedings specifically against [him].
>
> This is especially worrying in the sense that it can lead to a one-sided and non-impartial investigation..."

47. On the same date investigator M. took a witness statement from police officer A.K. who submitted that after the incident he had entered the office where the applicant was and asked everybody else to leave in order to talk to him in private and to find out the whole truth. He then had a chat with the applicant who had expressed remorse for what had happened. The investigator asked A.K. to comment on the applicant's allegations of ill-treatment, in reply to which A.K. denied having ill-treated the applicant. The investigator then asked A.K. to specify which office he had entered to have a chat with the applicant and who else was in that office, to which A.K. replied that he was new at the police station and he could not indicate with certainty the office in question or the identity of the other police officers who were there.

C. The criminal proceedings against the applicant

48. On 3 May 2004 the applicant was formally charged under Article 316 § 3 of the CC (see paragraph 121 below) with inflicting violence dangerous for health on a public official. The decision stated that the applicant had been brought to the police station on suspicion of illegal possession of a firearm. At around 6.30 p.m. in the office of police officer R.S., having been informed by police officer H.M. that an administrative case was to be brought against him, the applicant took a mobile phone charger from the table and intentionally hit the right eye of police officer H.M. with it.

49. On the same date the applicant was discharged from the hospital. His medical card contained information concerning his diagnosis and treatment similar to that given in the surgeon's certificate of 24 April 2004 (see paragraph 31 above).

50. On the same date investigator M. took a witness statement from police officer A.H., who similarly denied having ill-treated the applicant. Two other police officers, R.H. and M.B., were also questioned as witnesses. Both denied having helped the applicant, namely by taking off his handcuffs and giving him water. Police officer R.H. further stated, in

reply to the investigator's question, that the applicant had never complained to him about his health.

51. On 4 May 2004 investigator M. once again questioned the applicant, who confirmed his earlier allegations.

52. On 5 May 2004 expert G. drew up his report based on the results of the applicant's forensic medical examination. The report stated at the outset that the examination had begun on 27 April 2004 and had been completed on 5 May 2004. It then recounted in detail in the chapter entitled "The circumstances of the case" the official account of the incident, namely that the applicant had assaulted a police officer and had also been injured during the incident, and added at the end that, according to the applicant, he had been ill-treated. The report was concluded with the following expert's findings:

> "Results of [the applicant's] personal observation: [The patient] is lying in bed on his back in a semi-active state ... On the outer surface of the upper third part of the right shin there is a green-yellow-coloured bruise measuring 2.5 cm and having an irregular form. No objective features of other bodily injuries to other parts of the body have been disclosed. On 5 May 2004 [I received the X-ray consultation made on 30 April 2004 by an RFMTPC X-ray specialist, according to which] 'No bone changes have been disclosed in the X-ray of [the applicant's] left side of the chest'...
>
> Conclusion: [the applicant's] bodily injuries, namely the post-traumatic hematoma of the scrotum, the hematocele of the left side, the laceration of the left testicle and the bruise on the right shin, were caused by blunt and rough objects, [and] it cannot be ruled out [that they were caused] at the time and in the manner described above. The injury to the left testicle has a traumatic origin and could have been caused by any type of blow. In order to assess the degree of gravity of the bodily injury it is necessary to bring the patient to the forensic medical examination unit for examination on the twenty-first day following the incident."

53. On 6 May 2004 the applicant complained to the General Prosecutor that the criminal proceedings against him were unfounded. He submitted that investigator M. of the Regional Prosecutor's Office, due to his official duties, was linked to the police officers of the Regional Police Department and was therefore not impartial. He requested that investigator M. be removed from the case, that the case be transferred to the General Prosecutor's Office and that criminal proceedings be instituted on account of his torture.

54. On 10 May 2004 the Deputy General Prosecutor decided to dismiss the applicant's request as unfounded.

55. By a letter of 18 May 2004 the applicant was informed by the General Prosecutor's Office that his request had been dismissed but for reasons of expediency, upon the instruction of the General Prosecutor, the criminal case had been transferred for further investigation to the Yerevan Prosecutor's Office.

56. On 18 May 2004 expert G. supplemented his initial expert report by including an assessment of the gravity of the injuries. The conclusion now stated:

> "Conclusion: [the applicant's] bodily injuries, namely the post-traumatic hematoma of the scrotum, the hematocele of the left side, the laceration of the left testicle and the bruise on the right shin, were caused by blunt and rough objects, [and] it cannot be ruled out [that they were caused] at the time and in the manner described above; [the injuries] caused damage to health of medium degree with lasting deterioration of health, taking into account that the immediate effects of the injury lasted more than twenty-one days."

57. On an unspecified date the applicant wrote to the General Prosecutor's Office, seeking to have a decision taken on his request to have criminal proceedings instituted against the police officers.

58. On 21 May 2004 the applicant's criminal case was transferred to the Yerevan City Prosecutor's Office and was taken over by investigator T. of the Erebuni and Nubarashen District Prosecutor's Office of Yerevan.

59. On 24 May 2004 investigator T. questioned the applicant's mother, who stated that the applicant had never possessed a gun. She further stated that police officers had previously visited their home on numerous occasions, inquiring about the applicant and saying that they were looking for him because he participated in demonstrations.

60. On 25 May 2004 investigator T. questioned the applicant's friend, G.A., whom he had allegedly incited to go to demonstrations with him. G.A. stated that he was aware that the applicant had been brutally beaten at the police station and added that this was connected with his participation in demonstrations. He also confirmed that he had never seen the applicant with any firearms.

61. On 2 June 2004 the applicant lodged a complaint (*դիմում*) with the Erebuni and Nubarashen District Prosecutor, alleging that he had been tortured and ill-treated at the police station by the police officers whose names he had indicated in his statement of 25 April 2004, as a result of which he suffered a grave physical injury. However, charges were brought only against him and no assessment was made of the criminal acts committed by the police officers and of the fact that he had acted in necessary self-defence. Furthermore, he had been brought to the police station without any grounds and the real reason for his arrest was the political persecutions taking place in Armenia. The applicant requested, with reference to, *inter alia,* Articles 180, 181 and 182 of the Code of Criminal Procedure (CCP) (see paragraphs 108-110 below), that an investigation be carried out, that criminal proceedings be instituted against the police officers of the Artashat Police Department and that they be suspended from their duties during the investigation.

62. On 7 June 2004, in response to this complaint, investigator T. took a decision on dismissing a motion (*միջնորդություն*) filed by the applicant.

The decision stated at the outset that criminal proceedings had been instituted against the applicant on account of his inflicting physical injuries on police officer H.M. and that the applicant had also been injured as a result of the incident. It went on to conclude:

> "Having examined the materials of the criminal case, it has been established that the investigation has been carried out objectively and all the necessary investigative measures have been taken in the course of the investigation, during which no evidence has been obtained to suggest that the police officers of the Artashat Police Department have exceeded their authority[.H]ence there was no need to institute [a new set of] criminal proceedings and to carry out criminal prosecution."

63. On 11 June 2004 a confrontation was held between the applicant and one of the arresting police officers, A.S. The applicant submitted that he had been approached by police officers R.S. and A.S. at 3 p.m. on the date of his arrest and that police officer R.S. had invited him to the police station for a talk with the chief in connection with the demonstrations. Police officer A.S. confirmed this submission. He also admitted that he had not been aware that the applicant was being brought to the police station on suspicion of illegal possession of a firearm and had found out about this only upon arrival at the police station.

64. On 14 June 2004 a confrontation was held between the applicant and the second arresting police officer, R.S. The latter submitted, *inter alia*, that the deputy chief of the police department, G., had ordered him to bring the applicant to the police station for a talk. This order was oral and there was no written decision to arrest the applicant.

65. On 16 June 2004 the applicant requested information from Artashat Hospital concerning the events of 23-24 April 2004.

66. By two letters of 22 June 2004 the Head of Artashat Hospital informed the applicant of the following:

> "...[O]n 23 and 24 April three ambulance calls were [received] at the Artashat ambulance station from the Artashat Police Department in connection with [the applicant] kept at the police station.
>
> First call: ... 23 April 2004 at 3.05 p.m.: the purpose of the call was the determination of the level of drunkenness.
>
> - doctor on duty [A.G.]
>
> Second call: ... 23 April 2004 at 11.20 p.m.: doctor on duty [A.G.]. Diagnosis: bruising of soft tissues of the left side of the chest, fractured ribs (?) and contusion of testicles.
>
> Administration of Analgin, Dimedrol and Diclofenac pills.
>
> Third call: ... 24 April 2004 at 11.20 a.m. [the applicant] was brought to the reception room for a surgeon's consultation; doctor on duty [V.H.]; diagnosis: contusion of ribs and testicles.

[The applicant] was transferred to the surgical unit."

"...[The applicant] ... was admitted to the surgical unit of the Artashat Hospital CJSC on 24 April 2004 at 4.40 p.m. upon the referral ... of the hospital's reception room ... with the following diagnosis: post-traumatic hematoma of the scrotum, hematocele of the left side and laceration of the left testicle.

According to the description contained in the medical card the above diagnosis was a result of a trauma..."

67. On 22 June 2004 a confrontation was held between the applicant and police officer A.M. Both presented their version of the events. Similar confrontations were held between the applicant and police officers A.A., H.M., A.H., A.K. and the deputy chief of the police department G., on 7, 8 and 27 July and 5 August 2004 respectively. All the police officers denied having ill-treated him. Police officer A.A. admitted during the confrontation that he was one of the officers who, after the second ambulance call, had accompanied the applicant to the hospital where he had his ribs examined. A.A. stated that the doctors had not detected anything dangerous and the applicant had been taken back to the police station. He further admitted that he had been present during the examination of the applicant's ribs but not during the examination of his testicles.

68. On the same date the applicant was presented with the forensic medical expert's report of 5 May 2004 and its supplement of 18 May 2004 (see paragraphs 52 and 56 above).

69. On 28 June 2004 the applicant filed a motion, claiming that the expert's findings were not objective since the injuries sustained by him had been grave and intentionally inflicted and had resulted in loss of functionality of a vital organ. The applicant sought to have a new forensic medical examination ordered.

70. On 6 July 2004 the applicant lodged an appeal with the Criminal and Military Court of Appeal against the investigator's decision of 7 June 2004. He once again indicated the names of the alleged perpetrators and complained that the investigation was not impartial and was aimed at misrepresenting the circumstances of the incident in order to cover up for the police officers in question. He argued that there were sufficient reasons to institute criminal proceedings pursuant to Articles 175, 176 and 180 of the CCP (see paragraphs 105, 106 and 108 below), something which the investigating authority had failed to do.

71. On the same date investigator T. questioned doctors A.G. and V.H. Doctor A.G. stated that she had visited the applicant twice at the Artashat Police Department on 23 April 2004. The first call was intended to determine his level of intoxication. When she visited him at the police station following the second call, several hours later, the applicant was pale, in a cold sweat and in sharp pain. After an examination a bruising was disclosed in the lower left side part of the applicant's chest. He also

complained of a sharp pain in the testicle area. First aid was given, after which the applicant was transferred to Artashat Hospital, since there was an urgent need to have his chest and ribs X-rayed and for a surgeon's consultation. The initial diagnosis was rib fracture and testicle injury. She was not aware of the causes of those injuries, the diagnosis given at the hospital or how long the applicant had stayed there. Doctor V.H. stated that, following the applicant's examination at the Artashat Police Department, where he and a nurse had gone in response to a call received on 24 April 2004 at around 11 a.m., it was disclosed that he had contusions to his ribs and testicles. No injuries had been discovered on other parts of the body. The applicant had then been transferred to the hospital where surgery was performed. Doctor V.H. added that these injuries, especially the ones in the area of the testicles, could have been caused by a strong or a light blow or as a result of colliding with some object. He was not aware of the causes of those injuries.

72. On 7 July 2004 investigator T. decided to order a new forensic medical examination of the applicant on the ground that the veracity of the expert report of 5 May 2004 and its supplement of 18 May 2004 was open to doubt, referring, *inter alia*, to the fact that the expert's findings had been contested by the applicant (see paragraph 69 above). The new examination was to be conducted by the experts of the Yerevan Division of RFMTPC who were asked to answer the following questions: (1) what injuries are there on the applicant's body, including their location, nature, method of infliction, degree of gravity and age; and (2) whether expert G. had determined the degree of gravity of the applicant's injuries accurately.

73. On 8 July 2004 investigator T. decided to seize the applicant's medical card from Artashat Hospital.

74. On 22 July 2004 the Criminal and Military Court of Appeal decided to leave the applicant's appeal of 6 July 2004 (see paragraph 70 above) unexamined on the ground that the investigator's decision of 7 June 2004 had been taken in the course of the criminal investigation and was a procedural decision which, according to the relevant criminal procedure rules, did not fall within the scope of judicial control and could not be contested before the courts.

75. On the same date the experts received a copy of the investigator's decision of 7 July 2004 ordering a new forensic medical examination (see paragraph 72 above).

76. On an unspecified date the applicant lodged an appeal on points of law against the decision of the Court of Appeal of 22 July 2004. He submitted that the Court of Appeal was obliged under Article 278 of the CCP (see paragraph 113 below) to examine his complaint concerning the lawfulness of the investigator's decision.

77. On 28 July 2004 a new forensic medical expert report was produced which contained a conclusion almost identical to that made in the earlier

expert report (see paragraphs 52 and 56 above). The report also stated that the finding concerning the degree of gravity of the applicant's injuries had been accurate.

78. On 10 August 2004 two confrontations were held between the applicant and police officers R.H. and M.B. Both denied having provided any help to the applicant, either by taking off the handcuffs or giving him water.

79. On 13 August 2004 investigator T. decided to recognise police officer H.M. as a victim. Police officer H.M. was questioned, during which he confirmed his earlier statements.

80. On 17 August 2004 the charge against the applicant was modified by adding the fact of the applicant's alcohol intoxication. The applicant was again questioned and pleaded not guilty. He submitted once again that he had been brought to the police station for his participation in demonstrations and had been brutally beaten.

81. On the same date the investigator decided to end the investigation since sufficient evidence had been obtained to prepare an indictment.

D. Termination of the criminal proceedings in respect of the applicant

82. On 30 August 2004 the Erebuni and Nubarashen District Prosecutor decided to stop the prosecution and to terminate the criminal proceedings against the applicant with reference to Article 37 § 2(2) of the CCP (see paragraph 117 below). This decision first recapitulated the investigating authority's account of events, according to which the applicant was brought to the police station on suspicion of having carried firearms at demonstrations. When being taken to the police station and upon arrival the applicant used foul language, insulted the police officers and disobeyed their lawful orders. Having found out that the administrative case instituted on account of his behaviour would be submitted to a court, the applicant hit the right eye of police officer H.M. with a mobile phone charger, thereby intentionally inflicting injuries of medium gravity. Thereafter the applicant grabbed the telephone from the table and tried to hit H.M. with it, but was prevented by A.A., after which the applicant assaulted H.M. and the latter in self-defence kicked the applicant's testicles, grasped him and fell together with him on the chair and then on the floor. The decision concluded:

> "As a result of the incident [the applicant's] testicle was injured and removed through surgery, [so] damage of medium gravity was caused also to his health.
>
> Since [H.M.] acted within the limits of necessary self-defence, no criminal proceedings were instituted against him, while [the applicant] was charged under Article 316 § 3 of [the CC]...

> Taking into consideration the fact that during the commission of the offence [the applicant] also suffered damage of medium gravity for his health, namely his testicle was injured, underwent surgery and was removed, which is incurable, and that actually by suffering privations he atoned for his guilt and in such circumstances it is not expedient to carry out prosecution against him, I decided ... to stop the prosecution against [the applicant]..."

83. On an unspecified date the applicant contested this decision before a higher prosecutor.

84. On 24 September 2004 the Court of Cassation decided to dismiss the applicant's appeal on points of law against the decision of the Criminal and Military Court of Appeal of 22 July 2004 (see paragraph 74 above) with the following reasoning:

> "It follows from the materials of the case that [the applicant] filed a motion seeking to have criminal proceedings instituted against the employees of the Artashat Police Department on 2 June 2004, that is at a time when [a criminal case] had been already instituted on account of the incident on 23 April 2004 and an investigation into that case was already underway. Moreover, both the fact of a physical injury inflicted by [the applicant] on [police officer H.M.] and a physical injury inflicted by the latter on [the applicant] constituted a subject of that investigation. In those circumstances, there was no need to institute a separate criminal case on account of the physical injury inflicted on [the applicant], since the issues raised by [him] already constituted a subject of an investigation in a criminal case.
>
> Based on the results of the criminal case on 30 August 2004 the Erebuni and Nubarashen District Prosecutor of Yerevan decided to end criminal prosecution against [the applicant] and to terminate the criminal proceedings.
>
> In such circumstances, given that the issues raised by [the applicant] have already been a subject of examination by competent authorities and a final decision has been adopted in that respect, the request to have a new criminal case instituted concerning the same matter is incompatible with the requirements of Article 27 of [the CCP]."

85. By a letter of 24 September 2004 the applicant was informed by the General Prosecutor's Office that the decision to terminate the criminal proceedings was well-founded and there were no grounds to quash it.

86. On an unspecified date the applicant lodged an appeal with the Erebuni and Nubarashen District Court of Yerevan seeking to quash this decision. He contested the grounds for terminating the criminal proceedings, arguing in detail that the investigation had been flawed for many reasons, including overlooking the fact of his unlawful arrest, which was linked to his participation in demonstrations and political activities, and his ill-treatment by the police officers, which was falsely presented as self-defence on the part of police officer H.M. The testimonies of police officers A.A., R.S., H.M. and A.K. were false and lacked any probative value, since these persons were the perpetrators of his brutal beating. Furthermore, the police officers of the Artashat Police Department had been persecuting him since March 2004 and the anonymous phone call of 23 April 2004 was a mere set-up. Because of a slow and biased investigation the above-mentioned

persons had managed to avoid criminal responsibility. In particular, the investigating authority had failed to arrange immediate confrontations and did so only in July 2004, thereby allowing the police officers to coordinate their testimonies, while the conclusions of the forensic medical expert were not impartial. No criminal proceedings had been instituted, while the perpetrators were questioned only two months after the incident, which suggested that the case was of a political nature and enjoyed a high-ranking patronage. The fact of his systematic ill-treatment on the night of 23 April 2004 was confirmed by the relevant hospital papers and there were sufficient grounds to institute criminal proceedings against the police officers as required by Articles 175 and 176 of the CCP (see paragraph 105 and 106 below). The applicant insisted that such proceedings be instituted since the offence committed against him had absolutely not been investigated. In conclusion he requested that the criminal proceedings against him be terminated on exonerating grounds or else he be tried in court where he could prove his innocence.

87. On 12 November 2004 the Erebuni and Nubarashen District Court of Yerevan examined the applicant's appeal. Both the applicant and a representative of the investigating authority were present at that hearing and made submissions. The District Court found the applicant's appeal to be unsubstantiated and decided to dismiss it.

88. On 22 November 2004 the applicant lodged an appeal against that decision. In his appeal he argued, *inter alia,* that the District Court had ignored the numerous circumstances contained in his appeal against the prosecutor's decision substantiating the one-sided and flawed conduct of the investigation. The applicant requested the Court of Appeal to carry out an objective examination, to quash the decision of the District Court and to order the prosecutor to terminate his case on exonerating grounds or to submit the case to a court for examination on the merits. Attached to this appeal was a copy of the applicant's appeal lodged with the District Court (see paragraph 86 above).

89. On 24 December 2004 the Criminal and Military Court of Appeal found that the investigation had been carried out in compliance with the requirements of the criminal procedure law and the applicant's procedural and substantive rights had not been violated. It further found that the Erebuni and Nubarashen District Prosecutor had adopted a lawful and well-founded decision in compliance with the requirements of Article 37 of the CCP (see paragraph 117 below) and there were no grounds to quash the decision of the District Court.

90. On 28 December 2004 the applicant lodged an appeal on points of law. In his appeal he argued, *inter alia,* that the lower courts had ignored the fact that the investigating authority had violated the requirements of Article 17 of the CCP (see paragraph 102 below) and, having conducted a one-sided investigation, had found him guilty under Article 316 § 3 of the

CC (see paragraph 121 below). The courts had overlooked the biased conduct of the investigation, the existence of false documents in the case and the fact that the entire investigation was built upon the events surrounding his unlawful arrest by the police officers. The applicant once again argued that it was not the police officer but he who had acted in necessary self-defence, and requested that he be tried by an independent and impartial court in a public hearing and be allowed to prove his innocence. In conclusion he asked that the prosecutor's decision of 30 August 2004 and that of the Court of Appeal be quashed.

91. On 4 February 2005 the Court of Cassation examined the applicant's appeal, finding:

> "[The applicant], relying on the arguments raised before [the District Court], argued in his appeal [to the Court of Appeal] that the investigation had been flawed and one-sided, he had been accused unfairly, the charges against him had been dropped ... on non-exonerating grounds, the police officers who had ill-treated and injured him had not been subject to criminal responsibility, falsifications had taken place during the investigation, the police officers had given false testimonies, inaccurate forensic medical conclusions had been produced, etc.
>
> He also raised in his appeal that the decisions taken by the courts were unreasoned and that no reasoned answers had been given to the issues raised by him...
>
> Thus, [the applicant], in his appeals lodged with [the District Court and the Court of Appeal], raised also the questions brought up in [his] appeal on points of law."

92. The Court of Cassation went on to conclude that the lower courts, ignoring the requirements of Article 17 § 4 of the CCP (see paragraph 102 below) pursuant to which complaints alleging a violation of lawfulness in the course of criminal proceedings were to be thoroughly examined by the authority dealing with the case, had failed to address the arguments raised by the applicant and adopted decisions containing no reasoning. It decided to quash the decision of the Court of Appeal on that ground and to remit the case for a fresh examination.

93. On 3 March 2005 the Criminal and Military Court of Appeal examined the applicant's application anew and decided to dismiss it. In doing so, the Court of Appeal stated:

> "[The applicant] has asked for the case to be remitted for further investigation, with the expectation that it will later be brought before a court, arguing that the investigating authority has committed numerous violations of the criminal procedure rules, a number of investigative measures have been falsified and that furthermore he acted in necessary self-defence.
>
> The Court of Appeal finds that these arguments are groundless as there is no proof that the investigative measures have been falsified. [The applicant's] rights envisaged and guaranteed by law have been respected during the investigation of the case, this being reflected in relevant records which have been drawn up, including in the presence of lawyers. The fact that [the applicant] has refused to sign several records of investigative measures does not suggest that these records are unlawful.

> [The applicant's] arguments that he was brought to the police department on 23 April 2004 at around 3 p.m. and not 5 p.m. are not supported by the materials of the case and this fact has nothing to do with him being guilty or innocent.
>
> [The applicant] admitted that he had inflicted physical injuries on the police officer [H.M.] with a telephone as if in self-defence.
>
> This fact has been rebutted by the evidence in the case which is why the proceedings were not terminated by the Erebuni and Nubarashen District Prosecutor on exonerating grounds.
>
> The prosecuting authority has taken necessary measures envisaged by law in order to carry out a thorough, complete and objective examination of the case and to clarify both incriminating and exculpatory circumstances.
>
> [The applicant's] declarations concerning his innocence and the alleged violations have been examined in detail during the proceedings, including the proceedings in the Court of Appeal.
>
> As a result, [the applicant's] right to a fair hearing has been guaranteed, including the right to be confronted with witnesses who testified against him and other rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms."

94. On 11 March 2005 the applicant lodged an appeal on points of law. In his appeal he argued, *inter alia,* that the Court of Appeal had failed to carry out a proper assessment of the evidence in the case. It had ignored the fact that the charge was based on fabricated evidence and, having failed to examine his allegations of procedural irregularities as required by Article 17 § 4 of the CCP (see paragraph 102 below), agreed with the formulation of the charge against him, according to which he had resisted the police officers and disobeyed their lawful orders. The applicant further claimed that the Court of Appeal, relying solely on the false reports of the police officers, had found his arrest based on an anonymous telephone call and the initiation of an administrative case against an unlawfully arrested person to be lawful. The applicant also argued that the principle of presumption of innocence had been violated and requested that the charge against him be determined through a public hearing, taking into account that the criminal proceedings had been terminated on non-exonerating grounds and that the charge against him had been found to be proved. He asked that the prosecutor's decision and those of the lower courts be quashed.

95. On 13 May 2005 the Court of Cassation dismissed the applicant's appeal. In doing so, the Court of Cassation stated:

> "The arguments raised in [the applicant's] appeal concerning the violations committed by the prosecuting authority have been examined by the Court of Appeal. The court rightly stated that no evidence had been obtained to suggest that the investigative measures had been falsified or fabricated and that [the applicant] during the preliminary investigation had availed himself of the rights guaranteed by [the CCP].

[The applicant's] argument that he hit [H.M.] acting in self-defence was rebutted by the evidence collected during the investigation.

As regards his argument that the prosecutor groundlessly stopped prosecution against him in the absence of his consent, [it should be noted that the CCP] does not require a person's consent when stopping prosecution on the grounds envisaged by Article 37 § 2 (2) of [the CCP].

[The applicant] has availed himself of the right of judicial protection of his rights guaranteed by Article 38 of the Armenian Constitution, by contesting before the courts the decision of the investigating authority to stop prosecution and to terminate the criminal proceedings in accordance with the procedure prescribed by Article 263 and 290 of [the CCP].

The Court of Appeal, exercising judicial control over the pre-trial proceedings based on [the applicant's] application, rightly stated that the prosecutor's decision of 30 August 2004 was lawful and well-founded and it did not find [the applicant] guilty of commission of the crime as argued in the appeal.

The chamber finds that, within the grounds of the appeal, the decision of the Court of Appeal is lawful, well-founded and reasoned and there are no grounds for annulling it, therefore the appeal must be dismissed."

II. RELEVANT DOMESTIC LAW

A. The Constitution of 1995 (prior to the amendments introduced in 2005)

96. Article 15 provides that citizens shall enjoy all the rights and freedoms and bear all the duties prescribed by the Constitution and laws irrespective of their national origin, race, sex, language, creed, political or other opinion, social origin, property or other status.

97. Articles 19 provides that no one shall be subjected to torture, cruel or degrading treatment and punishment.

98. According to Article 41, a person accused of a crime shall be presumed innocent until proved guilty, in a procedure prescribed by law, by a final court sentence.

B. The Code of Criminal Procedure (in force from 12 January 1999), as in force at the material time

1. Arrest

99. According to Article 128, arrest is the act of taking a person and keeping him in short-term custody.

100. According to Articles 129 and 130, a person may be arrested (1) on immediate suspicion of having committed an offence; or (2) on the basis of a decision adopted by the prosecuting authority. In both cases an arrest must not exceed 72 hours from the moment of taking a person into custody.

2. Ill-treatment and investigation

101. According to Article 11 § 7, in the course of criminal proceedings no one shall be subjected to torture and to unlawful physical or mental violence, including such treatment inflicted through the administration of medication, hunger, exhaustion, hypnosis, denial of medical assistance and other cruel treatment. It is prohibited to coerce testimony from a suspect, accused, defendant, victim, witness and other parties to the proceedings by means of violence, threat, trickery, violation of their rights, and through other unlawful actions.

102. According to Article 17 § 4, complaints alleging a violation of lawfulness in the course of criminal proceedings must be thoroughly examined by the authority dealing with the case.

103. According to Article 27, the body of inquiry, the investigator and the prosecutor are obliged, within the scope of their jurisdiction, to institute criminal proceedings in each case when elements of a crime are disclosed, and to undertake all the measures prescribed by law in order to disclose the crimes and to identify the perpetrators.

104. According to Article 41 § 2(4), the court is entitled to request the prosecutor to institute criminal proceedings in cases prescribed by this Code.

105. Article 175 obliges the prosecutor, the investigator or the body of inquiry, within the scope of their jurisdiction, to institute criminal proceedings if there are grounds envisaged by this Code.

106. According to Article 176, the grounds for instituting criminal proceedings include, *inter alia,* information about crimes received from individuals and discovery of information about a crime or traces and consequences of a crime by the body of inquiry, the investigator, the prosecutor, the court or the judge while performing their functions.

107. According to Article 177, information about crimes received from individuals can be provided orally or in writing. An oral statement about a crime made during an investigative measure or court proceedings shall be entered respectively into the record of the investigative measure or of the court hearing.

108. According to Article 180, information about crimes must be examined and decided upon immediately, or in cases where it is necessary to check whether there are lawful and sufficient grounds to institute proceedings, within ten days following the receipt of such information. Within this period, additional documents, explanations or other materials

may be requested, the scene of the incident inspected and examinations ordered.

109. According to Article 181, one of the following decisions must be taken in each case when information about a crime is received: (1) to institute criminal proceedings, (2) to reject the institution of criminal proceedings, or (3) to hand over the information to the authority competent to deal with it.

110. According to Article 182, if there are reasons and grounds to institute criminal proceedings, the prosecutor, the investigator or the body of inquiry shall adopt a decision to institute criminal proceedings.

111. According to Article 184 § 1, the body of inquiry, the investigator or the prosecutor, based on the materials of a criminal case dealt by them, shall adopt a decision to institute a new and separate set of criminal proceedings, while the court shall request the prosecutor to adopt such a decision, if a crime unrelated to the crimes imputed to the accused is disclosed, which has been committed by a third person without the involvement of the accused.

112. According to Article 185 §§ 1, 2, 3 and 5, in the absence of lawful grounds for institution of criminal proceedings, the prosecutor, the investigator or the body of inquiry shall adopt a decision to reject the institution of criminal proceedings. A copy of the decision shall be served on the individual who has reported the crime. This decision may be contested before a higher prosecutor or the court of appeal. The court of appeal shall either quash the decision or uphold it. If the decision is quashed, the prosecutor shall be obliged to institute criminal proceedings.

113. Article 278, entitled "scope of judicial control", provides that a court, in cases and procedure prescribed by this Code, shall examine complaints about the lawfulness of decisions and actions of the body of inquiry, the investigator, the prosecutor and the bodies carrying out operative and reconnaissance measures.

114. According to Article 290, the suspect and the accused are entitled to lodge complaints with a court against the decisions and actions of the body of inquiry, the investigator, the prosecutor or the bodies carrying out operative and reconnaissance measures, including the refusals of such authorities to receive information about crimes or to institute criminal proceedings and their decisions to suspend or terminate criminal proceedings or to end criminal prosecution, in cases prescribed by this Code. If the complaint is found to be substantiated, the court shall adopt a decision ordering the authority dealing with the case to stop the violation of a person's rights and freedoms.

3. Termination of criminal proceedings and the presumption of innocence

115. According to Article 6, which lists the concepts contained in the CCP, "final decision" means any decision of the authority dealing with the case which rules out the institution of proceedings or their continuation, as well as decides on the merits of the case.

116. Article 18 provides that a person suspected or accused of a crime shall be presumed innocent until proved guilty, in a procedure prescribed by law, by a final court sentence.

117. According to Article 37 § 2(2), the prosecutor may decide not to carry out prosecution, if he considers it not to be expedient on the ground that the person has redeemed the committed act through suffering, limitation of rights and other privations which he has suffered in connection with the committed act.

118. On 25 May 2006 Article 37 of the CCP was amended and its sub-paragraph 2(2) was removed. The amended Article 37 prescribes that the court, the prosecutor or, upon the prosecutor's approval, the investigator may terminate the criminal proceedings in cases prescribed by Articles 72, 73 and 74 of the CC. Article 72 concerns cases in which the accused actively regretted the offence, Article 73 concerns cases in which the accused was reconciled with the victim and Article 74 concerns cases in which, due to a change in the situation, the accused or the act committed by him lost their danger for society. According to the amended Article 37 of the CCP, in cases envisaged by Articles 72 and 74 of the CC criminal proceedings may not be terminated if the accused objects.

119. According to Article 263, an appeal against a decision to terminate criminal proceedings or to end criminal prosecution may be lodged with a higher prosecutor within seven days after the receipt of a copy of the decision. The prosecutor's refusal to grant the appeal may be contested before a court.

120. According to Article 264, the criminal proceedings shall be resumed if the decision to terminate criminal proceedings or to end criminal prosecution is quashed.

C. The Criminal Code (in force from 1 August 2003)

121. According to Article 316 § 3, in force at the material time, inflicting violence, dangerous for life or limb, on a public official or his next-of-kin, shall be punishable with imprisonment for a period of five to ten years.

D. The Code of Administrative Offences (in force from 1 June 1986)

122. Article 182, as in force at the material time, provided that maliciously disobeying a lawful order or demand of a police officer or a member of the voluntary police made in the performance of his duties of preserving public order might lead to the imposition of a fine of between 50% of and double the fixed minimum wage, or of correctional labour for between one and two months with the deduction of 20% of earnings or in cases where, in the circumstances of the case, taking into account the offender's personality, the application of these measures would be deemed insufficient, of administrative detention not exceeding 15 days.

III. RELEVANT INTERNATIONAL AND DOMESTIC DOCUMENTS AND PRESS RELEASES

A. Annual Report: Activities of the Republic of Armenia's Human Rights Defender (Ombudsman), and on Violations of Human Rights and Fundamental Freedoms in Armenia During 2004

123. Chapter 3.3 of this Report, which concerned the right to be free from torture and cruel, inhuman and degrading treatment and punishment, included an overview of the applicant's particular case. The relevant extracts provide:

> "Violations of this right mainly concerned apprehension of a person by the police or investigative authority, upon suspicion or facts of committing a crime or an administrative infringement, the holding of such persons in custody and their interrogation.
>
> In their complaints, the complainants insist that the police have not abolished the practices of groundless apprehension, detention, the use of violence, the extraction of self-incriminating testimony and evidence, and fabricated prosecution evidence regarding the alleged crime.
>
> In criminal cases in which the police prepared the file, there are allegations that the concerned persons had to provide self-incriminating testimony in conditions of unlawful custody under the threat and use of violence and intimidation. These persons state such allegations both during pre-trial proceedings, before the investigative authority, and in court. Such statements and allegations are not fully investigated by the authorities; moreover, only superficial investigations are conducted, but only with the aim of refuting such allegations.
>
> Cases are not initiated on the basis of complaints addressed to the Prosecutor General of the country or to regional prosecutors. The review of such complaints is mainly assigned to the same investigator who is investigating the case, even when this investigator is the person whose actions are the subject of such allegations. In rare cases, when a different unit of prosecution is instructed to investigate these

allegations, there are still no safeguards of an impartial investigation. During the hearing courts tend to ignore these allegations.

Grisha Virabyan's criminal case is a rather typical example of this situation.

Virabyan was apprehended and taken to [the Artashat Police Department] from his village, without any grounds, at around [2.30 p.m. on 23 April 2004]. While in the police station, a police officer insulted, degraded, cursed at, and hit Virabyan. Virabyan, who did not tolerate the degrading treatment, in turn hit this police officer. Later, less grave physical injury was inflicted upon Virabyan while he was in police custody.

The prosecution initiated a criminal case against Virabyan for inflicting physical injury upon the police officer. In the criminal case, all the acts of the police officer were ruled as lawful, and there was no mention of the fact that Virabyan, who was unlawfully detained by the police, received his physical injury while in police custody. Further, no police officer had been punished for inflicting such injury upon Virabyan.

The Defender's reaction to the case was straightforward: what happened must be characterized as cruel and degrading treatment against Virabyan, because the head of an agency is responsible for the health and security of a person taken or invited to his institution. The person's behaviour in the institution may not serve as a justification for injuring him, and the staff have the duty to be tolerant.

In this case, the Defender had a meeting with not only Virabyan, but also the regional prosecutor and the regional and local police leadership. The circumstances of the case were discussed, and it was assumed that an impartial investigation of the case would be ensured. However, no progress was reported. With this background, the Prosecutor General was requested to assign another investigative authority to investigate the case; this request was granted, and [the Erebuni District Prosecutor's Office] was instructed to investigate the case. However, there was still no progress, and Virabyan was still the only one being charged. By that time his indictment was ready to be sent to court. The Prosecutor General ordered that the charges be dropped only after the Defender intervened."

124. Chapters 3.4 and 3.5 of this Report, which concerned the right to freedom of movement and the right to conduct assemblies, contained the following extracts:

"**3.4 Right to Freedom of Movement**

The early stages of the Defender's activities coincided with the demonstrations that were held in the country during March and April of 2004.

The opposition began to hold demonstrations and meetings with constituents in several regions starting in early February. The authorities did not interfere with these meetings.

The first time the authorities interfered with the demonstrations was at the end of March in Gyumri, which involved the arrest of demonstration participants and the commencement of criminal cases against them. ...

The Defender found a number of human rights violations in police actions regarding demonstrations held in the capital city in April.

On the days of the demonstrations, the police reportedly limited the movement of public transport into the capital city, which violated citizens' right to freedom of movement within the country. ...

During this period, individuals were frequently apprehended for administrative infractions and taken to police stations where administrative detention was ordered against them by the court.

A review of these cases shows that the legislation on administrative infractions was abused: "foul language" was cited as a basis for sentencing a person to administrative detention. ...

3.5 Right to Conduct Meetings, Gatherings, Rallies and Protests

The Defender took from the courts a number of cases related to administrative infractions and conducted a thorough study. The findings were sent to the Prosecutor General of Armenia and, in light of the apparent abuses of power in such cases, it was recommended that the guilty parties be punished. Some of the Defender's findings were isolated and sent to the Armavir Region Prosecutor for corroboration and processing. The regional prosecutor later announced that no crime was identified. The police officers in question were given warnings for some of the less significant violations."

B. Resolution 1374 (2004) of the Parliamentary Assembly of the Council of Europe (PACE): Honouring of obligations and commitments by Armenia, 28 April 2004

125. The relevant extracts from the Resolution provide:

"1. Since the end of March 2004, a series of protests have been organised by the opposition forces in Armenia, calling for a 'referendum of confidence' in President Kocharian. The possibility of such a referendum was first mentioned by the Armenian Constitutional Court following the presidential elections in February and March 2003. The Constitutional Court later clarified its proposal and the authorities are calling the opposition demands and protests an attempt to seize power by force.

2. The demonstrations, although announced, were not authorised by the authorities, who have threatened the organisers with criminal prosecution. Following the demonstrations on 5 April, the General Prosecutor opened criminal investigations against several members of the opposition and arrested many more, in connection with the opposition parties' rally. On the same occasion, several journalists and politicians were beaten up by unknown persons while the police stood by and took no action.

3. New demonstrations took place on 9, 10 and 12 April in Yerevan. In the early morning of 13 April, the security forces violently dispersed some 2,000 to 3,000 protesters who were attempting to march towards the presidential palace, calling for President Kocharian's resignation. The police reportedly used truncheons, water

cannons and tears gas, causing dozens of injuries. A number of protesters were arrested, including members of parliament, some of whom are members of the Assembly, and some were allegedly mistreated by the police while in custody. The security forces also assaulted and arrested several journalists who were covering the opposition rally.

4. Tensions in Armenia continue to run high; new protests are planned for the week of 26 April. For the time-being there seems to be little room for dialogue between the authorities and the opposition, even if some offers have been made and some members of the ruling majority – for example, the Speaker of the Armenian Parliament – have begun criticising the heavy-handed crackdown on demonstrations.

5. With regard to the conduct of the authorities, the Parliamentary Assembly ... is particularly concerned with the fact that:

i. arrests, including those carried out on the basis of the Administrative Code, ignored the demand to immediately end the practice of administrative detention and to change the Administrative Code used as a legal basis for this practice; ...

9. The Assembly calls upon the Armenian authorities to: ...

iii. immediately investigate – in a transparent and credible manner – the incident and human rights abuses reported during the recent events...

iv. immediately release the persons detained for their participation in the demonstrations and immediately end the practice of administrative detention and amend the Administrative Code to this effect...”

C. Report by the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Doc. 10163, 27 April 2004

126. The Report contains an explanatory memorandum to the draft of the PACE Resolution 1374. The relevant extracts from the explanatory memorandum provide:

“Since the end of March, opposition forces in Armenia decided to jointly organise mass protests to force a ‘referendum of confidence’ in President Kocharian. The possibility of such a referendum was first mentioned by the Armenian Constitutional Court following the presidential elections in February and March last year, which were strongly criticised by the international community. ...

The Armenian authorities reacted to the opposition call for protests with a campaign of political intimidation and administrative and judicial harassment. Once the protests started, the reaction was even more ruthless. Demonstrations were violently dispersed, journalists were beaten up, a large number of opposition supporters were arrested and premises of the opposition parties were raided by the police.

...

In January 2004 the Assembly adopted its second monitoring report since the accession of Armenia to the Council of Europe in January 2001. Resolution 1361, adopted on this occasion, takes note of some encouraging developments that took place in the last two years...

However, the Resolution ... sharply criticised the [presidential and parliamentary] elections carried out in 2003. Moreover, it listed a number of serious concerns with regard to the democratic and human rights conduct of the Armenian authorities and expressed its expectations that these issues will be speedily dealt with in accordance with Council of Europe standards and principles.

Regrettably, the reaction of the Armenian authorities in the events of March and April [2004] demonstrate that the Assembly's request for further progress was ignored and that, with regard to some of the Assembly's key concerns, the situation has even worsened.

Administrative detention

With regard to the scandalous and continued use of administrative detention, Resolution 1361 urged the authorities to amend the Administrative Code to put an end to this practice which is incompatible with the organisation's standards. The Assembly also asked the authorities to submit this new draft to Council of Europe expertise by April 2004.

Instead of immediately ending this practice and preparing the necessary legislative drafts to this effect, the Armenian authorities resorted to a wide use of administrative detentions during the recent events. While it is difficult to verify the exact number of persons who were arrested and the legal basis used for their detention, most reports indicate that their number was between two and three hundred.

The Assembly repeats its demand for an immediate end to the practice of administrative detention. The Administrative Code must be revised without any further delay. ...

... Regrettably, according to Human Rights Watch, several persons arrested during the recent events were subjected to abuse during their detention by the police. These allegations must be investigated, in a speedy, transparent and credible manner, and if their veracity is confirmed, persons responsible should be punished in accordance with the law."

D. Human Rights Watch Briefing Paper, 4 May 2004, Cycle of Repression: Human Rights Violations in Armenia

127. The relevant extracts of the Briefing Paper provide:

"**Summary**

At the end of March 2004, Armenia's political opposition united in mass peaceful protests to force a "referendum of confidence" in President Robert Kocharian and to call for his resignation. In response, the Armenian government embarked on a campaign to break the popular support for the political opposition with mass arrests,

violent dispersal of demonstrations, raids on political party headquarters, repression of journalists, and restrictions on travel to prevent people from participating in demonstrations. Hundreds of people were detained, many for up to fifteen days; some were tortured or ill-treated in custody...

The origin of the opposition's demands was the government's failure to date to redress the deeply flawed 2003 presidential election, which Kocharian, the incumbent, won. Disturbingly, the government is now repeating, with increasing violence, a pattern of repression that surrounded last year's election. At that time, the international community warned the Armenian government that its intimidation of the opposition through the use of arrests and administrative detentions must stop. However, in March and April 2004, the Armenian government not only began a fresh campaign of detentions, but added to the intimidation with security force violence. ...

Human Rights Watch calls on the Armenian authorities to cease intimidating the political opposition, to stop using excessive force against demonstrators and torture and ill treatment in custody, and to hold accountable those responsible for these abuses. We call on the international community to assist the government of Armenia in urgently addressing this situation and to ensure that further acts of repression are not repeated. ...

Prelude to April 12-13

At the end of March 2004, two of the main opposition groups, the Artarutiun (Justice) Alliance, which consists of nine parties – including the Republic Party, the People's Party, and the National Unity Party – joined forces and announced its campaign of action. Following this move, the opposition intensified its efforts, making further announcements and mobilising in Armenia's provinces. The authorities responded by restricting freedom of movement, carrying out detentions, and threatening criminal charges against opposition campaign organisers. ...

From [5 April] the number of rallies in Yerevan steadily increased, as did the number of opposition supporters detained or otherwise intimidated. The Republic Party estimated that from the end of March until [12 April], police had detained, searched, or harassed more than 300 of its supporters. ...

Restrictions on Travel to Yerevan

From the end of March until mid-April 2004, police restricted the movement of opposition supporters trying to travel to Yerevan to attend rallies by setting up road blocks, stopping cars, questioning the passengers, and denying permission to travel further to those they believed were opposition supporters. ...

On the morning of [5 April], between [10.30 a.m. and 12.00 noon], police stopped nine members of the National Unity Party in three cars at a check point as they were leaving Vanadzor, Armenia's third largest city, on the main road to Yerevan. They were intending to participate in a rally at [3.00 p.m.] in Yerevan. Police held the nine men at the Vanadzor police station, reportedly telling them, 'we have saved you from being beaten in Yerevan'. Police took three of the men to the local courts, which sentenced them to five days of administrative detention for not following police orders. ...

Detentions: Due Process Violations and Torture

It is difficult to estimate the total number of opposition supporters detained since the beginning of April 2004. By April 17, the Justice Alliance had documented the detentions of 327 opposition supporters, and the Republic Party estimated that about 300 of its members had been either detained, harassed, or searched...

[Some opposition supporters] were detained and held for from several hours to fifteen days. Many were held and then released with no documentation or registration of the arrest ever having occurred. Others were taken to court, and given penalties of up to fifteen days in custody for petty offences under the Administrative Code. ...

Torture and ill-treatment in police custody

Human Rights Watch documented several cases of torture and ill-treatment in police custody during the government crackdown against the opposition in April 2004. Opposition party officials claim that during this period police regularly beat their supporters in police custody: "There were lots of cases of people being beaten at the police stations after detention, especially those who came from the regions" [said the press secretary of the People's Party]..."

E. Europe and Central Asia: Summary of Amnesty International's Concerns in the Region, January-June 2004

128. The Report contains a chapter devoted to Armenia whose relevant extracts provide:

"Opposition demonstrations in April [2004] were part of a two-month campaign of mass public protests launched by opposition political parties demanding the resignation of President Robert Kocharian. ... During their campaign hundreds of opposition supporters, including prominent opposition party members, were reportedly arbitrarily detained throughout the country and dozens were sentenced to 15 days' administrative detention after trials that were said to have fallen far short of international fair trial standards..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

129. The applicant complained that he had been subjected to torture at the Artashat Police Department on 23 April 2004 and that the authorities had failed to carry out an effective instigation into his allegations of ill-treatment. He invoked Articles 3, 8 and 13 of the Convention. The Court considers that the applicant's complaints fall to be examined solely under Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. Six months

(a) The parties' submissions

(i) The Government

130. The Government claimed that the applicant had failed to lodge his complaints under Article 3 of the Convention within six months from the date of the final decision within the meaning of Article 35 § 1 of the Convention. More precisely, the applicant was entitled under Article 290 of the CCP (see paragraph 114 above) to contest the decisions of the investigating authority before the domestic courts. The applicant successfully exercised this right by instituting two sets of proceedings: the first one contesting the investigator's decision of 7 June 2004 rejecting his allegations of ill-treatment and the second one contesting the prosecutor's decision of 30 August 2004 terminating the criminal proceedings against him. The six months period must be calculated from the date of the final decision in the first set of proceedings, which was taken by the Court of Cassation on 24 September 2004. The application, which had been lodged with the Court only on 10 November 2005, was therefore out of time. The Government argued that the applicant's submission that the six months period must be calculated from the date of the final decision in the second set of proceedings, namely 13 May 2005, was ill-founded, since those proceedings concerned a different issue, namely the termination of the criminal proceedings, and none of the court decisions taken in those proceedings concerned the applicant's request to institute criminal proceedings against the alleged perpetrators of ill-treatment or contained any ruling on the applicant's allegations of ill-treatment.

(ii) The applicant

131. The applicant contested the Government's claim. He admitted that he had instituted two sets of proceedings resulting in two final decisions being taken by the Court of Cassation on 24 September 2004 and 13 May 2005 respectively. However, his complaint lodged with the Erebuni and Nubarashen District Prosecutor on 2 June 2004 and consequently the first set of proceedings instituted by him against the prosecutor's decision taken on that complaint, which terminated with the Court of Cassation's decision of 24 September 2004, were not an effective remedy. More

precisely, the prosecutor dismissed his complaint just five days later, namely on 7 June 2004, without carrying out any official and independent investigation into his allegations of ill-treatment and basing his findings solely on the results of the preliminary investigation carried out in the context of the criminal case against him. His appeals lodged with the courts against the decision of 7 June 2004 were also ineffective because the courts refused to examine them in substance on the ground that the impugned decision was a procedural decision and they lacked jurisdiction to do so. In such circumstances, both the prosecutor's decision of 7 June 2004 and the Court of Cassation's decision of 24 September 2004 could not be considered as a "final decision" within the meaning of Article 35 § 1.

132. On the other hand, the trial against him was capable of providing redress for the Article 3 violations that he had suffered. He had therefore pursued this remedy by lodging an appeal against the prosecutor's decision of 30 August 2004 terminating the criminal proceedings against him. Since he had never denied that he had struck the police officer with a mobile phone charger, the only issue at trial would have been whether or not he had acted in self-defence, as he had always maintained. Had he succeeded in this appeal, he would have been afforded an effective remedy, such as an official recognition of the fact that he had struck the police officer in self-defence which would necessarily have implied a finding that he had been ill-treated in detention. Since the final decision on his appeal against the prosecutor's decision of 30 August 2004 was taken by the Court of Cassation on 13 May 2005, he had complied with the six months' rule by lodging his application on 10 November 2005.

(b) The Court's assessment

133. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter where it has been introduced within six months from the date of the final decision in the process of exhaustion of domestic remedies (see *Danov v. Bulgaria*, no. 56796/00, § 56, 26 October 2006).

134. The purpose of the six months' rule is to promote security of law, to ensure that cases raising issues under the Convention are dealt with within a reasonable time and to protect the authorities and other persons concerned from being under uncertainty for a prolonged period of time (see *İçöz v. Turkey* (dec.), no. 54919/00, 9 January 2003, and *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August 2004).

135. The only remedies that must be exhausted are those which are available and sufficient to afford redress in respect of the breaches alleged, but not such which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI). Furthermore, in a case where an applicant avails himself of a domestic remedy and it becomes clear, at a later stage, that this remedy was not

effective, the six-month period provided for in Article 35 § 1 of the Convention should in principle be calculated from the time when the applicant became aware, or should have become aware, of the ineffectiveness of the remedy (see, among other authorities, *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002; *İçöz*, cited above; and *Chitayev and Chitayev v. Russia*, no. 59334/00, § 117, 18 January 2007).

136. The Court notes that Armenian law provides a remedy to the victims of alleged ill-treatment. In particular, Article 176 of the CCP enables such victims to inform the relevant authorities about a crime committed, including any acts of ill-treatment. Pursuant to Article 177 of the CCP such information may be provided orally or in writing, while Article 181 of the CCP requires in each case when such information is provided that a reasoned decision be taken whether to institute or to reject the institution of criminal proceedings. When there are sufficient grounds to institute criminal proceedings, Articles 175 and 182 of the CCP oblige the relevant authorities to do so. If the authorities decide to reject the institution of criminal proceedings, such decision can be contested before the courts under Article 185 of the CCP and, should the courts quash such decision, the prosecutor is obliged to institute criminal proceedings.

137. The applicant availed himself of this remedy by informing the authorities of the alleged ill-treatment inflicted on him by the police officers in his statement of 25 April 2004 which was made only two days after the alleged ill-treatment (see paragraph 36 above). Furthermore, this was followed by a number of other letters addressed to the authorities seeking to have criminal proceedings instituted against the perpetrators of his alleged ill-treatment (see paragraphs 45, 53 and 57) and culminated in his complaint lodged with the authorities on 2 June 2004, in which the applicant specifically invoked the relevant Articles of the CCP, including its Articles 181 and 182 (see paragraph 61 above).

138. Nevertheless, no formal decision was taken by the authorities, whether to institute or to reject the institution of criminal proceedings as required by Article 181 of the CCP, which could have been contested later by the applicant before the courts under Article 185 of the CCP. Instead, for unexplained reasons, the applicant's complaint of 2 June 2004 was treated by the investigator as a *motion* filed in the context of the criminal proceedings against him and a decision was taken on 7 June 2004 to dismiss that motion, thereby rejecting in substance his allegations of ill-treatment (see paragraph 61 and 62 above). The applicant attempted to contest that decision before the courts but his appeals were not examined on the merits on the ground that the impugned decision was a procedural one and the courts lacked jurisdiction to review it (see paragraph 74 above).

139. In such circumstances, the remedy available to the applicant under the above-mentioned Articles of the CCP turned out to be ineffective, while the court proceedings instituted by him against the investigator's decision of

7 June 2004 were incapable of providing redress. Thus, the final decision taken in those proceedings by the Court of Cassation on 24 September 2004 cannot be taken into account for the purpose of calculation of the six-months period, as claimed by the Government.

140. The Court further notes that the applicant argued that he had also another remedy available to him, that is raising his allegations of ill-treatment in the course of the trial against him. The Government disputed that argument, claiming that the applicant's appeals lodged with the courts against the prosecutor's decision to discontinue the trial were not effective remedies to be exhausted. In this respect, the Court observes that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. The Court has already held on a number of occasions that the rule of exhaustion is neither absolute not capable of being applied automatically; it is essential to have regard to the circumstances of the individual case (see *Akulinin and Babich v. Russia*, no. 5742/02, § 30, 2 October 2008, and *Vladimir Fedorov v. Russia*, no. 19223/04, § 40, 30 July 2009).

141. In the present case, as already indicated above, the applicant's complaint seeking to have criminal proceedings instituted against the perpetrators of the alleged ill-treatment was examined in substance in the context of the criminal proceedings against him rather than as a separate issue and resulted in the investigator's decision of 7 June 2004 taken in the context of those proceedings. Even the Court of Cassation, in refusing to examine the merits of the applicant's appeal against that decision, stated that there was no need to institute a separate set of proceedings because the applicant's allegations of ill-treatment were closely linked to the subject matter of the criminal case against him and were to be examined in its context (see paragraph 84 above). Furthermore, as already indicated above, such treatment of the applicant's complaint prevented him from putting the matter before the courts through the appeal procedure envisaged for cases in which a decision to reject the institution of criminal proceedings is taken pursuant to Article 181 of the CCP. Thus, the Court considers that, in the particular circumstances of the case, having been deprived of any other form of judicial review, the applicant cannot be blamed for trying to avail himself of judicial protection in respect of his allegations of ill-treatment by raising them in the course of the trial against him (see, *mutatis mutandis*, *Akulinin and Babich*, cited above, §§ 25-34, and *Vladimir Fedorov*, cited above, §§ 41-50).

142. Furthermore, the Court is of the opinion that such avenue of exhaustion pursued by the applicant was not, in principle, a *prima facie* futile attempt incapable of providing redress. In particular, since the trial against the applicant was discontinued by a prosecutor's decision, his criminal case was put before the courts for the first time following his appeal against that decision. In his appeal to the courts the applicant

complained *inter alia* about his alleged ill-treatment and the inadequacy of the investigation and requested that criminal proceedings be instituted (see paragraph 86 above). Even if the courts were primarily called upon to determine the question of whether the termination of the criminal proceedings against the applicant on the grounds provided in the prosecutor's decision was lawful, nevertheless, in reviewing that decision, they were required under Article 17 § 4 of the CCP to examine any complaints alleging a violation of lawfulness in the course of the proceedings, including the applicant's allegations of ill-treatment. Furthermore, even if the courts were not vested with power to institute criminal proceedings, they were entitled to apply with such a request to a prosecutor under Articles 41 § 2(4) and 184 § 1 of the CCP. Lastly, the courts were entitled under Article 264 of the CCP to quash the prosecutor's decision discontinuing the trial and to order a further investigation into the circumstances of the charge against the applicant which were closely linked to his allegations of ill-treatment.

143. The Court further observes that the applicant's appeal was examined through public and adversarial proceedings, to which both the applicant and the investigating authority were parties. It is true that both the District Court and the Court of Appeal failed to address any of the allegations raised in the applicant's appeal (see paragraphs 87 and 89 above). However, this became the reason why the Court of Cassation decided to quash the decision of the Court of Appeal and to remit the case for a fresh examination. In doing so, the Court of Cassation took cognisance of the applicant's allegations, including his allegations of ill-treatment and inadequate investigation, and ordered, with reference to Article 17 § 4 of the CCP, that they be duly addressed in a reasoned decision (see paragraphs 91 and 92 above). Furthermore, during the subsequent fresh examination of the case, both the Court of Appeal and the Court of Cassation examined and dismissed the applicant's claims of self-defence which were closely linked to and could not be separated from his allegations of ill-treatment (see paragraphs 93 and 95 above). Moreover, both courts explicitly addressed and rejected the applicant's allegations of ineffective investigation (ibid.).

144. In the light of the foregoing, the Court considers that, in the particular circumstances of the case, the applicant's appeal lodged with the courts against the prosecutor's decision of 30 August 2004 was an effective remedy capable of providing redress in respect of his allegations of ill-treatment. Accordingly, the six months period provided for in Article 35 § 1 of the Convention should be considered to have started running from the date of the final decision in those proceedings, namely 13 May 2005. The applicant has therefore complied with the six-month rule by introducing his application on 10 November 2005. Consequently, the Government's objection must be dismissed.

2. Conclusion

145. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The alleged ill-treatment

(a) The parties' submissions

(i) The Government

146. The Government, relying on the findings made by the domestic authorities in the applicant's criminal case, argued that the applicant sustained injuries to his testicle as a result of the incident provoked by him. The applicant was the first to assault a police officer by hitting him with a mobile phone charger and was prevented from continuing his assault by other police officers, as a result of which he – together with the injured police officer – fell on a chair and then on the floor, sustaining the injuries in question. The Government claimed that the materials of the applicant's criminal case contained sufficient evidence supporting this account of events, including the forensic medical expert reports which stated that the applicant's injuries could have been caused as a result of the said incident. There has therefore been no violation of Article 3 in respect of the treatment received by the applicant in custody.

(ii) The applicant

147. The applicant submitted that there was evidence beyond reasonable doubt confirming that he had sustained serious injuries while in police custody. The Government, however, had failed to provide a satisfactory and convincing explanation for these injuries. His allegations of ill-treatment made at the domestic level had been prompt, consistent and detailed, and he had pursued various avenues of complaint, including after the criminal case against him had been dropped. In contrast, the testimonies of the police officers provided during the investigation contained numerous inconsistencies. The circumstances of his police custody, namely his being interviewed without a lawyer and the interview not being recorded, reveal a disregard for safeguards against abuse. Furthermore, according to the official account of events, he had been examined by a doctor for alcohol intoxication following the alleged incident. However, no injuries were recorded during that examination, which suggested that he must have

sustained them at a later time. Lastly, the CPT reports concluded that persons deprived of their liberty in Armenia faced a significant risk of being ill-treated.

(b) The Court's assessment

(i) General principles

148. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports* 1996-V). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII).

149. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Labita*, cited above, § 120, and *Assenov and Others*, cited above, § 94). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; *Selmouni*, cited above, § 99, and *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006).

150. In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25; *Labita*, cited above, § 121; and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

151. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and

convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 183, ECHR 2009-...). Similarly, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among other authorities, *Aksoy v. Turkey*, 18 December 1996, § 61, *Reports* 1996-VI; *Selmouni*, cited above, § 87; and *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010-...). Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under Article 3 of the Convention (see *Mikheyev v. Russia*, no. 77617/01, § 127, 26 January 2006).

(ii) Application of the above principles in the present case

152. The Court observes at the outset that it is undisputed that the applicant sustained injuries while in police custody, namely bruises to his chest and ribs and a lacerated testicle. The parties, however, disagreed as to the circumstances in which those injuries had been sustained.

153. In this respect, the Court notes that the Government did no more than refer to the findings of the official domestic investigation in support of their position. The Court, however, is mindful of its findings below that the investigation in question was ineffective, fundamentally flawed and incapable of producing credible findings (see paragraph 179 below). It notes, as discussed in greater detail below, that the explanation given for the applicant's injuries in the course of that investigation, namely that they had been sustained as a result of a fall, was based entirely on the statements of the police officers, including the alleged perpetrators, who could not have been impartial witnesses (see, in particular, paragraph 165 below). It lacked detail and was accepted by the investigating authority hastily and without any justification on the very first day of the investigation and never seriously questioned. The official forensic medical reports, which did not rule out the possibility of the applicant's injuries having been sustained in the above-mentioned circumstances, were seriously deficient and could not be regarded as reliable evidence (see, in particular, paragraphs 170-172 below).

154. The Court, based on all the materials in its possession, finds the explanation given for the applicant's injuries both by the Government and the domestic authorities to be highly dubious and implausible. It notes, at the same time, that at all stages of the investigation the applicant presented a consistent and detailed description of who had ill-treated him and how. His allegations were compatible with the description of his injuries contained in various medical records (see paragraphs 31 and 66 above).

155. The Court cannot, in view of the foregoing, consider the Government's explanation of the applicant's injuries to be satisfactory and convincing and consequently concludes that his injuries were attributable to a form of ill-treatment for which the authorities were responsible.

156. In order to determine whether a particular form of ill-treatment should be qualified as torture, the Court must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As the Court has previously found, it appears that the intention was that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Ireland v. the United Kingdom*, cited above, § 167, and *Selmouni*, cited above, § 96). In addition to the severity of the treatment, there is a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see *Salman*, cited above, § 114).

157. The Court observes that the applicant was subjected to a particularly cruel form of ill-treatment which must have caused him severe physical and mental pain and suffering. In particular, his testicles were repeatedly kicked and punched and hit with metal objects. These injuries had lasting consequences for his health, as his left testicle was so badly smashed that it had to be removed. He was further beaten up with his hands handcuffed behind his back and received blows to his chest and ribs. Strong inferences can be drawn from the circumstances of the case that the ill-treatment was inflicted on the applicant intentionally in order either to punish or to intimidate him or both. Having regard to the nature, degree and purpose of the ill-treatment, the Court finds that it may be characterised as acts of torture (see *Selmouni*, cited above, §§ 96-105, and *Salman*, cited above, § 115).

158. The Court concludes that there has been a substantive violation of Article 3 of the Convention.

2. The alleged inadequacy of the investigation

(a) The parties' submissions

(i) The Government

159. The Government submitted that the circumstances in which the applicant had sustained an injury had been examined within the framework of the criminal case against him. His allegations of ill-treatment had received a prompt and due response. The investigation into his criminal case

had been carried out by authorities, the Ararat Regional Prosecutor's Office and the Yerevan City Prosecutor's Office, which had no hierarchical or institutional connection with the Artashat Police Department and were therefore independent and impartial bodies. The authorities had taken all possible measures to identify those responsible, including numerous interrogations, confrontations and medical examinations. Moreover, an additional medical examination had been ordered specifically upon the applicant's own motion. Furthermore, all the motions and requests filed by the applicant had been treated with necessary promptness. The investigation had been open, which was supported by the fact that the applicant had had access to all the necessary materials in his case. In sum, the authorities had complied with their positive obligation under Article 3 to carry out an effective investigation.

(ii) The applicant

160. The applicant submitted that no effective official investigation capable of leading to the establishment of facts and the identification and punishment of those responsible had been carried out into his allegations of ill-treatment. Firstly, there had been no independent and impartial inquiry. The authorities entrusted with the investigation did not enjoy sufficient operational autonomy from the alleged perpetrators and the agency where they served. Furthermore, the preliminary investigation had been carried out by the same investigator who had instituted criminal proceedings and brought charges against him and collected evidence in support of that charge, which was based entirely on the statements made by the alleged perpetrators. The investigator, when interviewing the police officers, had not asked any questions, nor had he considered any of the inconsistencies in the police evidence or taken evidence from other witness, including his State-appointed lawyer. The initial forensic medical examination had been flawed, incomplete and not prompt, while the second one had been conducted with a significant delay and was incapable of producing credible findings. The transfer of the case from one authority to another had not led to an independent investigation either, since the authority which took over the case had relied solely on the findings of the preliminary investigation. His allegations of ill-treatment had been rejected without any justification, while the alleged perpetrators had never been suspended from duty.

(b) The Court's assessment

(i) General principles

161. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to

everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Assenov and Others*, cited above, § 102, and *Labita*, cited above, § 131).

162. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and, if justified, punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident including, *inter alia,* eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Mikheyev*, cited above, § 108; *Akulinin and Babich*, cited above, § 46; and *Vladimir Fedorov*, cited above, § 67).

163. Furthermore, the investigation must be expedient. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation was at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, cited above, § 133-135). Consideration was given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV), and the length of time taken during the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

164. Finally, the Court reiterates that for an investigation into alleged ill-treatment by State agents to be effective, it should be independent. The independence of the investigation implies not only the absence of a hierarchical or institutional connection, but also independence in practical terms (see *Oğur v. Turkey* [GC], no. 21594/93, § 91, ECHR 1999-III; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004; and also *Ergi v. Turkey*, 28 July 1998, § 83, *Reports* 1998-IV, where the public prosecutor investigating the death of a girl during an alleged clash between security forces and the PKK showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

(ii) Application of the above principles in the present case

165. The Court notes that, in the present case, criminal proceedings were instituted on the very day of the applicant's alleged ill-treatment and an

investigation was launched (see paragraph 21 above). However, it observes that the circumstances of the criminal case were based solely on the version of events provided by the police officers, including the alleged perpetrators and their colleagues who were all in some way involved in the events of 23 April 2004, without even hearing the applicant or any other witnesses. Moreover, this version of events was considered an established fact from the very outset (see, for example, the investigator's decision ordering a forensic medical examination in paragraph 34 above) and the entire investigation was conducted on that premise. It is notable that the police version was so readily accepted by the investigator at a time when he did not yet even have at his disposal the forensic medical expert's conclusions as to the nature and possible causes of the applicant's injuries. As a result, the applicant was the only accused in those proceedings, while the police officers in question were never even regarded as possible suspects and, moreover, participated either as witnesses or, in the case of police officer H.M., a victim.

166. The Court has serious doubts as to whether the investigation undertaken by the authorities, as described above, could be regarded as an inquiry whose purpose was to investigate the applicant's allegations of ill-treatment and to identify and punish those responsible, as argued by the Government. It appears that its sole purpose was to prosecute the applicant and to collect evidence in support of that prosecution.

167. At no point did the investigating authorities provide any explanation as to why they considered the testimonies of the police officers credible, and that of the applicant unreliable. The applicant's numerous requests that his allegations of ill-treatment be thoroughly investigated and the perpetrators be prosecuted and punished were either ignored or received a perfunctory response (see, for example, paragraph 54 above). It therefore appears that the investigating authorities, without any justification, gave preference to the evidence provided by the police officers and, in doing so, can be said to have lacked the requisite objectivity and independence.

168. The Court further observes that about a month after the investigation was launched the applicant's criminal case was transferred from the Regional Prosecutor's Office to the Yerevan City Prosecutor's Office (see paragraph 58 above). Both the domestic authorities and the Government failed to explain the reasons for this transfer. In any event, it is notable that the transfer of the applicant's criminal case, whatever its reason and intended aim, did not produce significantly different results, since the Yerevan City Prosecutor's Office was quick to reject the applicant's allegations of ill-treatment in a perfunctory manner (see paragraph 62 above) and continued to carry out the same line of prosecution on the basis of the same version of events.

169. As regards the specific measures taken in the course of the above investigation, the Court cannot overlook a number of significant omissions

and discrepancies capable of further undermining its reliability and effectiveness.

170. The Court would point out, in particular, the manner in which the applicant's forensic medical examination was conducted. The investigator's decision ordering such examination was taken on the day following the alleged ill-treatment, namely 24 April 2004 (see paragraph 34 above). The applicant alleged that forensic expert G. started his examination only on 5 May 2004. It is not entirely clear from the expert's report whether this was the case, but it can be safely assumed that the expert did not commence the examination at least three days after the investigator's decision (see paragraphs 40 and 52 above). It is to be noted that the resulting expert report contained no mention of the injuries on the applicant's chest and ribs (see paragraph 52 above), which only a few days earlier had been recorded by the doctors of Artashat Hospital (see paragraphs 66 and 71 above). It cannot therefore be ruled out that this omission on the part of the forensic expert was caused by the delay in question. Nor can it be ruled out that it was made as a result of a cursory examination or for possible lack of independence. Whichever it may be, it prompts the Court to doubt the credibility of the forensic expert's findings. Moreover, had the forensic expert not failed to record these injuries, his conclusions as to the possible causes for the applicant's injuries might have been radically different.

171. The Court further notes a number of other significant deficiencies in the report produced by forensic expert G. Firstly, similarly to the overall course of the investigation, it is doubtful that a report which relied on the hastily accepted police version of events could be regarded as a measure truly intended and capable of providing an independent and objective explanation for the possible causes of the applicant's injuries (see paragraph 52 above). Secondly, the report failed to give any answer to one of the key questions posed by the investigator, namely whether the injury to the applicant's testicle was caused by one or several blows, which, given the circumstances of the case and the conflicting versions of events, was crucial for the investigation. Thirdly, the expert's initial conclusion contained a phrase – "The injury to the left testicle has a traumatic origin and could have been caused by *any type of blow*" (emphasis added, see paragraph 52 above) which could be seen as suggesting a broad spectrum of possible causes for the applicant's injuries but which, for unexplained reasons, was deleted from the updated version of the same conclusion (see paragraph 56 above). This once again casts doubt on both the independence and thoroughness of the forensic expert and the credibility of his conclusions.

172. The Court observes that the investigating authorities failed to address any of the shortcomings of the above-mentioned forensic medical examination. It is true that, after the applicant contested the findings contained in the expert's report of 5 May 2004, the veracity of those findings was brought into question and a new forensic medical examination

was ordered (see paragraph 72 above). However, this happened after a significant lapse of time, which was mainly due to the fact that a copy of that report was presented to the applicant only about one and a half months after it had been produced (see paragraphs 68 above). As a result, the new forensic medical examination was not initiated until almost three months after the incident. The Court is convinced that such a delayed examination was not capable of providing an accurate record of the applicant's injuries and consequently leading to credible findings. It therefore seriously doubts that this measure was able to rectify the shortcomings of the first forensic medical examination. This is also confirmed by the fact that the report produced as a result of the new examination contained findings practically identical to those in the first report (see paragraph 77 above).

173. The Court is further struck by the fact that the investigating authorities failed to make any assessment of other medical evidence in the case, namely the records of Artashat Hospital which, as already indicated above, revealed injuries to the applicant's chest and ribs in addition to those to his testicles (see paragraph 66 above), which were missing from the forensic expert's findings. It appears that no account was taken of this obviously important evidence at any stage of the investigation. Despite the seriousness of the applicant's injuries, the investigating authorities did not examine the hospital records or question the relevant doctors until almost two and a half months after the incident (see paragraphs 71 and 73 above) and, even then, it appears that no importance was given to this evidence and no conclusions were drawn. No attempts were made to resolve the discrepancy between this evidence and the findings of the forensic expert, including by questioning the latter, and no answer was given to the question of whether the applicant's injuries in their entirety could have been caused in the circumstances alleged by the police officers.

174. In view of the foregoing, the Court cannot but conclude 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.

175. The Court further points out the failure of the investigating authority immediately to isolate and question the police officers involved in the incident, thereby failing to prevent a possible collusion. In this respect, the Court notes that the very first police reports on the incident did not mention anything about the applicant falling face-down on a chair (see paragraphs 19 and 20 above), an explanation which was later relied on to justify his injuries. Such explanation, nevertheless, started to appear consistently in almost all the statements taken by the investigator during the subsequent interviews with the police officers (see, for example, paragraphs 23, 24 and 35 above). Furthermore, having regard to the manner in which those interviews were conducted, the Court observes that on several such occasions the police officers were simply asked to provide their

account of events and no questions whatsoever were put to them (see paragraphs 25, 35 and 39 above). Even on those few occasions when the investigator did ask questions, there were never more than one or two questions and in most cases the questions asked were of a standard nature and lacked specificity (see paragraphs 23, 24, 44, 47 and 50 above). The interviews in question therefore appear to have been a pure formality and the Court cannot regard them as a serious and timely attempt to establish the circumstances in which the applicant suffered his injuries.

176. It must also be noted in this respect that the interviews in question were conducted in the above-mentioned non-inquisitive manner despite a number of worrying discrepancies and ambiguities apparent in the case. In particular, it is not clear why the hospital records indicated that the doctor's first visit to the police station, whose purpose was to determine the applicant's level of intoxication, was made at around 3.05 p.m. on 23 April 2004 (see paragraph 66 above), while according to the police records the applicant was arrested not before 5.40 p.m. On the other hand, the record of the applicant's intoxication examination indicates that the first visit took place at around 7 p.m. (see paragraph 18 above), which suggests that there may have been a mistake in the hospital records. However, even assuming that this was the case, it is highly surprising that the applicant, who had already suffered – allegedly at 6.30 p.m. (see paragraphs 27 and 48 above) – injuries to his chest and a very serious injury to his testicle, did not report any of this to the doctor examining him for alcohol intoxication. Moreover, assuming that the applicant had been in such an emergency condition since 6.30 p.m., it is not clear why an ambulance was called to provide first aid only at 11.20 p.m. (see paragraph 29 above). As already indicated above, no efforts were made to clarify these important circumstances when taking statements from the police officers. Nor were any relevant questions put to doctor A.G. who had made both visits to the police station on the day of the incident (see paragraph 71 above).

177. The Court would lastly point out a number of other failures and omissions. Firstly, no attempt was ever made to question the applicant's state-appointed lawyer, who was apparently present at his questioning on the night of the incident (see paragraph 28 above), or police officer O.B., who had drawn up the record indicating that the applicant felt unwell and required medical assistance (see paragraph 29 above). Secondly, confrontations between the applicant and the police officers were held with delays of about one and a half up to three and a half months (see paragraphs 63, 64, 67 and 78 above), thereby significantly minimising the effectiveness of these measures, while no confrontation was held between the applicant and deputy chief of police G. Thirdly, it is not clear on what grounds the prosecutor's decision terminating the criminal proceedings stated that police officer H.M. in self-defence had kicked the applicant's testicles (see paragraph 82 above) when none of the evidence in the case

appears to have contained such an allegation. Lastly, the domestic courts failed to address thoroughly any of the above-mentioned shortcomings in the investigation during what appears to have been a cursory examination of the applicant's allegations (see paragraphs 93 and 95 above).

178. In view of the foregoing, the Court concludes that the investigation into the applicant's allegations of ill-treatment undertaken by the authorities was ineffective, inadequate and fundamentally flawed. It was not capable of producing credible findings and leading to the establishment of the facts of the case. The authorities failed to act with due diligence and cannot be said to have been determined to identify and punish those responsible.

179. Accordingly, there has been a procedural violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

180. The applicant complained that the grounds on which the criminal proceedings against him had been terminated violated his right to be presumed innocent. He relied on Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

181. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

182. The Government claimed that the grounds on which the Erebuni and Nubarashen District Prosecutor decided on 30 August 2004 to terminate the proceedings against the applicant, as prescribed by Article 37 § 2(2) of the CCP, were compatible with the requirements of Article 6 § 2. This was a procedural decision which did not make a finding of guilt of the accused. Similarly, when a person is arrested on suspicion of having committed an offence or when the prosecutor brings charges and later defends them in court, such measures do not imply that the accused is guilty and do not

violate the presumption of innocence. The decision to terminate the criminal proceedings against the applicant which, moreover, could be contested before the courts, merely expressed the prosecutor's unwillingness to take the case to court and did not contain any statement of the applicant's guilt. With reference to the judgment in the case of *Salabiaku v. France*, the Government argued that presumptions of fact or law operated in every legal system and the Convention did not prohibit such presumptions in principle (see *Salabiaku v. France*, 7 October 1988, § 28, Series A no. 141-A).

(b) The applicant

183. The applicant claimed that the prosecutor's decision of 30 August 2004 was not merely a procedural decision but a "final decision", by virtue of Article 6(10) of the CCP, capable of establishing or implying his guilt. Furthermore, this decision was in no way comparable to a decision to arrest, to bring charges or to discontinue proceedings for lack of evidence. Such decisions did not contain a presumption of guilt, while termination of proceedings on the grounds envisaged by Article 37 § 2(2) of the CCP contained a direct link between the reasons for such termination and the question of his criminal responsibility. The applicant argued that the prosecutor's decision, which was upheld by three judicial instances, was either based upon an express finding of guilt or constituted a judicial decision or statement by a State official that assumed or reflected that he was guilty, in violation of the requirements of Article 6 § 2. Furthermore, the findings made in the case of *Salabiaku v. France* were distinguishable from and not applicable to his case.

184. The applicant further drew the Court's attention to the fact that on 25 May 2006 the Armenian parliament amended Article 37 of the CCP and abolished the ground for termination of proceedings prescribed by its sub-paragraph 2(2). Thus, such ground for termination of proceedings as "redemption of the committed act through suffering", prescribed by former Article 37 § 2(2), which moreover did not require the consent of the accused, was removed. The applicant argued that this amendment was introduced because the former Article 37 § 2(2) of the CCP conflicted, *inter alia,* with the principle of presumption of innocence.

2. The Court's assessment

185. The Court reiterates that the presumption of innocence enshrined in Article 6 § 2 is one of the elements of the fair criminal trial that is required by Article 6 § 1 (see *Deweer v. Belgium*, 27 February 1980, § 56, Series A no. 35, and *Minelli v. Switzerland*, 25 March 1983, § 27, Series A no. 62). It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official

regards the accused as guilty (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X). Moreover, the principle of the presumption of innocence may be infringed not only by a judge or court but also by other public authorities, including prosecutors (see *Allenet de Ribemont v. France*, 10 February 1995, § 36, Series A no. 308, and *Daktaras*, cited above, § 42).

186. Furthermore, a fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question (see *Matijašević v. Serbia*, no. 23037/04, § 48, ECHR 2006-X, and *Khaydarov v. Russia*, no. 21055/09, § 149, 20 May 2010). The latter infringes the presumption of innocence, whereas the former has been regarded as unobjectionable in various situations examined by the Court (see *Garycki v. Poland*, no. 14348/02, § 67, 6 February 2007). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Daktaras*, cited above § 43).

187. The Court is therefore called upon to determine whether in the present case the outcome of the criminal proceedings against the applicant allowed doubt to be cast on his innocence, although he had not been proved guilty.

188. The Court notes that the criminal proceedings against the applicant were terminated at the pre-trial stage by the prosecutor's decision of 30 August 2004 on the ground prescribed by former Article 37 § 2(2) of the CCP, which allowed termination of proceedings if, in the prosecutor's opinion, the accused had redeemed the committed act through suffering and other privations which he had suffered in connection with the committed act. The prosecutor's decision was upheld by the domestic courts.

189. Having regard to the prosecutor's decision of 30 August 2004, the Court notes that this decision was couched in terms which left no doubt as to the prosecutor's view that the applicant had committed an offence. In particular, the prosecutor first recapitulated the circumstances of the case as contained in the charge against the applicant and in a manner suggesting it to be established that police officer H.M. had acted in self-defence, while the applicant had intentionally inflicted injuries on him. The prosecutor went on to conclude that it was inexpedient to prosecute the applicant because he had also suffered as a result of the committed act. In doing so, the prosecutor specifically used the words "during the commission of the offence [the applicant had] also suffered damage" and "by suffering privations [the applicant had] atoned for his guilt" (see paragraph 82 above).

190. Both the Court of Appeal and the Court of Cassation upheld this decision and in substance did not disagree with it. Moreover, in doing so, both courts found it to be established that the applicant's claim that he had acted in self-defence was unfounded. It should be mentioned that the

proceedings before the courts did not determine the question of the applicant's criminal responsibility but the question of whether it was necessary to terminate the case on the grounds provided by the prosecutor. Thus, it cannot be said that these proceedings resulted or were intended to result in the applicant being "proved guilty according to law".

191. Lastly, the Court observes that the ground for termination of criminal proceedings envisaged by former Article 37 § 2(2) of the CCP in itself presupposed that the commission of an imputed act was an undisputed fact.

192. In view of the foregoing, the Court considers that the reasons for termination of the criminal case against the applicant given by the prosecutor and upheld by the courts with reliance on Article 37 § 2(2) of the CCP were in violation of the presumption of innocence.

193. There has accordingly been a violation of Article 6 § 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

194. The applicant complained that he had been subjected to ill-treatment because of his political opinion. He relied on Article 14 of the Convention, taken in conjunction with Article 3 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

195. The Court notes that this complaint is linked to that examined under Article 3 and must therefore likewise be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

196. The Government submitted that the applicant had failed to substantiate with any evidence his allegation that the treatment to which he had been subjected was politically motivated. Furthermore, he had failed to

demonstrate that he had received different treatment compared to anybody in an identical situation. More precisely, the applicant had been taken to the police station on suspicion of carrying a firearm. He had been questioned in relation to that suspicion and the injury which he had suffered as a result of the incident between him and the police officer. The applicant had admitted that he had been asked at the police station to provide his identity, which implies that the police officers were not aware of who he was, let alone of his political activity. Even assuming that the police officers were aware of the applicant's political activity, nothing suggests that their actions were motivated by such considerations. Nor did the applicant indicate any signs or expressions in the behaviour of the police officers which would suggest the opposite. His allegations were based solely on a number of reports describing the general situation in Armenia in 2003-2004. Thus, he had failed to provide proof beyond reasonable doubt and it cannot be said that he had suffered discrimination for political motives contrary to both substantive and procedural guarantees of Article 14 in conjunction with Article 3.

(b) The applicant

197. The applicant submitted, first, that he had a significant political profile in Armenia and it was implausible that the police officers responsible for his arrest would have been unaware of his opposition political activities. Second, there were numerous reports before the Court revealing that in March and April 2004 the Armenian authorities had engaged in widespread suppression of the political opposition. Third, there was no credible evidential basis for his arrest which had been effected on the basis of an anonymous telephone call. Fourth, the testimonies of the police officers concerning the reasons for his arrest had been inconsistent and implausible. Fifth, when under arrest he had been asked no questions about the alleged suspicion and the only questions put had concerned his participation in the demonstrations and his role in encouraging others to participate. All these factors confirmed the fact that his arrest had been politically motivated and consequently that he had suffered discrimination on the ground of his political opinion contrary to both substantive and procedural guarantees of Article 14 in conjunction with Article 3.

2. The Court's assessment

(a) Whether the respondent State is liable for ill-treatment on the basis of the applicant's political opinion and activity

198. The Court has established above that agents of the respondent State ill-treated the applicant while in custody in violation of Article 3 of the Convention. The applicant has further alleged that there has been a separate

violation of Article 14 in that political motives played a role in his ill-treatment.

199. Discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). The Court has examined previously a number of cases in which the applicants alleged under Article 14 in conjunction with Articles 2 or 3 of the Convention that death or ill-treatment had been inflicted as a result of discrimination, namely racial hatred. It held that racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII; *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 63, ECHR 2005-XIII (extracts); and *Stoica v. Romania*, no. 42722/02, § 126, 4 March 2008).

200. The Court considers that the foregoing applies also in cases where the treatment contrary to Article 3 of the Convention is alleged to have been inflicted for political motives. It reiterates that pluralism, tolerance and broadmindedness are hallmarks of a "democratic society" (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV). 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.

201. Faced with the applicant's complaint of a violation of Article 14, as formulated, the Court's task is to establish whether or not political motives were a causal factor in the applicant's ill-treatment so as to give rise to a breach of Article 14 of the Convention taken in conjunction with Article 3.

202. It notes in this connection that, in assessing evidence, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined

formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Nachova and Others* [GC], cited above, § 147).

203. Turning to the circumstances of the present case, the Court takes note of the general context in which the applicant's arrest and detention took place. In this respect, the Court points out that, as it has recently found, in March and April 2004, which was a period of political sensitivity in Armenia, there existed an administrative practice of deterring or preventing opposition activists from participating in demonstrations, or punishing them for having done so (see *Hakobyan and Others v. Armenia*, 34320/04, §§ 90-99, 10 April 2012). There are a number of elements in the present case which may allow the Court to reach a finding that in the present case the applicant fell victim to such administrative practice.

204. The Court observes at the outset that the applicant was an active member of the opposition. He participated in the rallies organised by the opposition parties during the above-mentioned period and was arrested shortly thereafter. Turning to the particular circumstances of the applicant's arrest, the Court notes a number of further relevant factors.

205. First, the initial reason for the applicant's arrest was indirectly linked to his participation in the rally of 12 April 2004. It is true that it was the allegation that he had carried an illegal firearm at that demonstration which served as a ground for his arrest and not his participation *per se*. However, this allegation was based solely on an anonymous telephone call allegedly received at the Artashat Police Department at 5.05 p.m. on 23 April 2004. There is no objective evidence to support this allegation and the fact that such a telephone call was indeed received at the police department, such as for example a recording of that conversation, which may call into question the veracity of this fact. Nor is there any detailed transcript of that conversation.

206. Second, the Court finds it hard to believe that, if such a call was indeed received, the police officers did not even try to verify the identity of the caller or the veracity of the information provided, but almost immediately, within less than an hour, proceeded to arrest the applicant on such precarious grounds without making any further inquiries. Nor can the Court overlook the fact that this was done in the absence of any decision by the investigating authority as required by the domestic law (see paragraph 100 above).

207. Third, this initial suspicion against the applicant was almost entirely forgotten once he was taken to the police station. The applicant was not even questioned in connection with that suspicion but instead an administrative case was initiated against him under Article 182 of the CAO

for disobeying lawful orders of police officers and using foul language, allegedly because of his behaviour during his arrest. The sole investigative measure taken in connection with the initial suspicion appears to be the search of the applicant's home, which was authorised some four days after the applicant's arrest and implemented another two days later (see paragraphs 41 and 43 above). Such lack of any particular expedition in carrying out this measure appears to be in stark contrast to the haste with which the applicant's arrest was effected.

208. Fourth, the Court cannot overlook the conflicting statements made by the two arresting police officers concerning the reasons for the applicant's arrest. In particular, police officer A.S. admitted that he had found out about the reasons why the applicant had been taken to the police station only after taking him there (see paragraph 25 and 63 above). The Court finds it hard to believe that a police officer, ordered to carry out the arrest of a suspect who is allegedly carrying an illegal firearm, was not made aware of such an important fact, especially in view of the potential risks that this might have carried for the arresting officer. Furthermore, police officer R.S. admitted that he had been ordered to take the applicant to the police station "for a talk", not mentioning anything about any firearm (see paragraph 64 above). Moreover, police officer A.S. confirmed that this talk was connected with the demonstrations (see paragraph 63 above).

209. Fifth, not only was the initial suspicion against the applicant left without proper follow-up but the administrative case against him under Article 182 of the CAO was also abandoned and never revisited once the incident occurred at the police station and the applicant faced a new criminal charge, namely the assault of police officer H.M.

210. In view of all the above factors, the Court considers that there are cogent elements in the present case prompting it to doubt whether the true reasons for the applicant's arrest and the subsequent administrative proceedings were those indicated in the relevant police materials. It further notes that the entirety of the materials before the Court allow it to draw sufficiently clear and concordant inferences to the effect that the applicant fell victim to the administrative practice mentioned above (see paragraph 205 above) and that the real reason for the applicant's arrest was to discourage him from participating in the opposition demonstrations or to punish him for having done so.

211. Having reached this conclusion, the Court is mindful of the fact that it has been called upon to determine whether the ill-treatment which the applicant suffered at the hands of the police officers during his politically motivated arrest was linked to his political opinion. The Court notes in this respect that some of the reports mentioned above contain allegations of ill-treatment of opposition supporters in police custody during the relevant period (see paragraph 127 above). However, the Court cannot lose sight of

the fact that its sole concern is to ascertain whether, in the case at hand, the applicant's ill-treatment was motivated by his political opinion.

212. The Court notes that it has not ruled out the possibility that in certain cases of alleged discrimination it may require the respondent Government to disprove an arguable allegation of discrimination and – if they fail to do so – find a violation of Article 14 of the Convention on that basis. However, where it is alleged – as here – that a violent act was motivated by political intolerance, such an approach would amount to requiring the respondent Government to prove the absence of a particular subjective attitude on the part of the person concerned. While in the legal systems of many countries proof of the discriminatory effect of a policy or decision will dispense with the need to prove intent in respect of alleged discrimination in employment or the provision of services, that approach is difficult to transpose to a case where it is alleged that an act of violence was politically motivated (see, *mutatis mutandis*, *Nachova and Others* [GC], cited above, § 147, and *Bekos and Koutropoulos*, cited above, § 63).

213. In the present case, the applicant alleged that the violent behaviour towards him in police custody was motivated by the fact that he was a member of the political opposition. The police officers repeatedly made remarks of a political nature when taking him to the police station, at the police station and while ill-treating him. Notably, police officer H.M. before assaulting the applicant by kicking and punching him said that "it was their country and that they could do anything they wanted to and that what [the applicant and other supporters of the political opposition] were trying to do, meaning the change of the government, was all in vain" (see paragraph 36 above). Furthermore, police officer A.K., while beating him, was asking him "which of the opposition leaders was encouraging his activity" (see paragraph 38 above).

214. The Court notes that there is no objective way to verify the applicant's allegations. It is true that the circumstances of the applicant's politically motivated arrest call for strong criticism and raise serious concerns. However, this in itself is not sufficient to conclude that the ill-treatment *per se* was similarly inflicted for political motives. Judging by the circumstances of the case, it cannot be ruled out that the applicant was subjected to ill-treatment as a revenge for the injury that he had inflicted on police officer H.M. Nor can it be ruled out that the violent behaviour of the police officers was triggered by the confrontation between them and the applicant or for reasons of police brutality which are beyond any explanation. While such actions must receive the utmost condemnation and may not be justified or condoned under any circumstances, the Court cannot conclude beyond reasonable doubt that the applicant's ill-treatment was motivated by his political opinion.

215. Lastly, the Court does not consider that the alleged failure of the authorities to carry out an effective investigation into the alleged political

motive for the applicant's ill-treatment should shift the burden of proof to the respondent Government with regard to the alleged violation of Article 14 in conjunction with the substantive aspect of Article 3 of the Convention. The question of the authorities' compliance with their procedural obligation is a separate issue, to which the Court will revert below (see *Nachova and Others* [GC], cited above, § 157, and *Bekos and Koutropoulos*, cited above, § 66).

216. In sum, having assessed all the relevant elements, the Court does not consider that it has been established beyond reasonable doubt that political motives played a role in the applicant's ill-treatment by the police.

217. Accordingly, there has been no violation of Article 14 of the Convention taken in conjunction with Article 3 in its substantive limb.

(b) Whether the respondent State complied with its obligation to investigate possible political motives for the applicant's ill-treatment

218. The Court considers that when investigating violent incidents State authorities have the additional duty to take all reasonable steps 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. Failing to do so and treating politically induced violence and brutality on an equal footing with cases that have no political overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see, *mutatis mutandis*, *Nachova and Others v. Bulgaria*, nos. 43577/98 and 43579/98, § 158, 26 February 2004, and *Bekos and Koutropoulos*, cited above, § 69).

219. Admittedly, proving political motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible political overtones to a violent act is an obligation to use best endeavours and not absolute. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of politically induced violence (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 159, and *Bekos and Koutropoulos*, cited above, § 69).

220. The Court further considers that the authorities' duty to investigate the existence of a possible link between political attitudes and an act of violence is an aspect of their procedural obligations arising under Article 3 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention to secure the fundamental value enshrined in Article 3 without discrimination. Owing to the interplay of the two provisions, issues such as those in the present case may fall to be

examined under one of the two provisions only, with no separate issue arising under the other, or may require examination under both Articles. This is a question to be decided in each case on its facts and depending on the nature of the allegations made (see *Nachova and Others* [GC], cited above, § 161, and *Bekos and Koutropoulos*, cited above, § 70).

221. In the present case, the Court has already found that the Armenian authorities violated Article 3 of the Convention in that they failed to conduct an effective investigation into the incident. It considers that it must examine separately the complaint that there was also a failure to investigate a possible causal link between alleged political motives and the abuse suffered by the applicant at the hands of the police.

222. The Court notes that the applicant alleged on numerous occasions before the investigating authorities that his ill-treatment had been linked to his participation in the opposition demonstrations and had been politically motivated, requesting that this circumstance be investigated and the perpetrators be punished (see paragraphs 36, 38, 45, 61 and 80 above). Two other witnesses had also made submissions which supported this allegation (see paragraph 59 and 60 above). The Court lastly observes that the lack of reasons for the applicant's arrest was noted by the Armenian Ombudsman (see paragraph 46 above).

223. In view of the foregoing, the Court considers that the investigating authorities had before them plausible information which was sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible political motives for the applicant's ill-treatment.

224. However, the authorities did almost nothing to verify this information. Only two police officers, A.M. and R.S., were apparently asked if they were aware of the applicant's political affiliation, which can hardly be considered to be a real attempt to investigate such a serious allegation and appears to have been a mere formality (see paragraphs 23 and 24 above). No further questions were asked, while the remaining police officers, including H.M. and A.K. whom the applicant directly implicated in making politically intolerant statements before and during his ill-treatment, were not even questioned regarding this allegation. No attempts were made to investigate the circumstances of the applicant's arrest, including the numerous inconsistencies and other elements pointing at the possible politically motivated nature of that measure, and no conclusions were drawn from the available materials. The Court therefore concludes that the authorities failed in their duty under Article 14 of the Convention taken in conjunction with Article 3 to take all possible steps to investigate whether or not discrimination may have played a role in the applicant's ill-treatment.

225. Accordingly, there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 in its procedural limb.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

226. The applicant further raised a number of complaints under Articles 5, 6 § 1, 10 and 11 of the Convention.

227. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

228. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

229. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

230. The Government submitted that there had been no violation of any of the rights guaranteed by the Convention and the applicant could not therefore claim any non-pecuniary damage.

231. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violations found. Ruling on an equitable basis, it awards the applicant EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

232. The applicant also claimed 4,250 United States dollars (USD) and 3,602.45 pounds sterling (GBP) for the costs and expenses incurred before the Court. The applicant submitted detailed time sheets stating hourly rates in respect of his domestic lawyers and one KHRP lawyer.

233. The Government submitted that the claims in respect of the domestic and foreign lawyers were not duly substantiated with documentary proof, since the applicant had failed to produce any contracts certifying that there was an agreement with those lawyers to provide legal services. Furthermore, the applicant had used the services of an excessive number of

lawyers, despite the fact that the case was not so complex as to justify such a need.

234. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court further reiterates that legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* [GC], no. 33202/96, § 27, ECHR 2000-I). In the present case several of the applicant's complaints were declared inadmissible. Therefore the claim cannot be allowed in full and some reduction must be applied. Making its assessment on an equitable basis, the Court awards the applicant a total sum of EUR 6,000 for costs and expenses, to be paid in pounds sterling into his representatives' bank account in the United Kingdom.

C. Default interest

235. The Court considers it appropriate that the default interest 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 complaints concerning the applicant's ill-treatment, lack of an effective investigation, the applicant's right to be presumed innocent, his ill-treatment having been inflicted for political motives and lack of an effective investigation into this allegation admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a substantive violation of Article 3 of the Convention in that the applicant was subjected to torture;

3. *Holds* that there has been a procedural violation of Article 3 of the Convention in that the authorities failed to carry out an effective investigation into the applicant's allegations of ill-treatment;

4. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

5. *Holds* that there has been no substantive violation of Article 14 of the Convention in conjunction with Article 3 of the Convention;

6. *Holds* that there has been a procedural violation of Article 14 of the Convention in conjunction with Article 3 of the Convention in that the

authorities failed to carry out an effective investigation into the applicant's allegations that his ill-treatment had been politically motivated;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 25,000 (twenty-five 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;

(ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into his representatives' bank account in the United Kingdom;

(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;

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

Done in English, and notified in writing on 2 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President