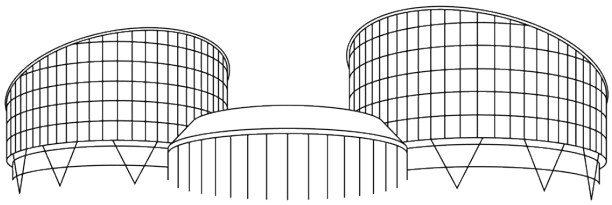

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 9443/05
Arman Lenvelovich KHACHATRYAN
against Russia

The European Court of Human Rights (First Section), sitting on 10 April 2012 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 18 February 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Arman Lenvelovich Khachatryan, is an Armenian national who was born in 1974 and lives in Moscow. He was represented before the Court by Ms O. Mikhaylova, a lawyer practising in Moscow. The Russian Government were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights. In view of the applicant's nationality, the Government of Armenia

were invited to submit written comments on the case. However, no reply was received within the prescribed time-limit.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Criminal proceedings against the applicant

3. On 18 June 2003 the applicant was arrested and charged with attempted murder, robbery and illegal firearms trafficking. His pre-trial detention was extended on several occasions.

4. On 18 March 2004 the Moscow City Court, in a jury trial, convicted the applicant as charged and sentenced him to fifteen years' imprisonment.

On 18 August 2004 the Supreme Court of Russia upheld the conviction on appeal.

5. Following the applicant's request, on 5 October 2005 the Presidium of the Supreme Court of Russia quashed the judgment of 18 March 2004, as upheld on 18 August 2004, by way of supervisory review, and remitted the case for a retrial.

6. On 13 April 2006 the Moscow City Court convicted the applicant as charged and sentenced him to three years and one month's imprisonment.

7. The applicant did not appeal against that judgment.

2. Medical assistance

8. During his arrest on 18 June 2003 the applicant received a number of serious injuries, including gunshot wounds and fractures of the lower limbs, craniocerebral injury and concussion.

9. On the same day the applicant was taken to Moscow hospital no. 71, where he received primary surgical treatment for the gunshot wounds and had plaster casts applied to the fractures. He was subsequently transferred to Moscow hospital no. 20, where he stayed until 24 June 2003.

10. On 24 June 2003 the applicant was placed in Moscow remand prison IZ-77/1. Upon his admission, the applicant was examined by a surgeon and discovered to have a perforating gunshot wound of the right thigh, a non-perforating gunshot wound of the left gluteal region, a closed fracture (immobilised) of left medial malleolus, a fracture (immobilised) of the lower third of the right shinbone, a fracture of the proximal phalanx of the hallux of the right foot, and a closed craniocerebral injury. He was subsequently hospitalised in the surgical unit of the remand prison hospital.

11. In the surgical unit of the remand prison hospital the applicant was further diagnosed with concussion and traumatic neuropathy of the right median nerve. His condition was evaluated as "moderately severe". The

applicant was treated with antibacterial, anti-inflammatory, general health-improving, anaesthetic, local, antispasmodic and sedative medication.

12. On 28 July 2003 the applicant was discharged from the IZ-77/1 prison hospital in a satisfactory condition, after which he received outpatient treatment at the IZ-77/1 medical unit.

13. On 11 September 2003 the applicant filed a request with the acting Prosecutor of Moscow asking for his transfer from remand prison IZ-77/1 to Moscow hospital no. 20 for specialised treatment.

14. On 8 January 2004 the applicant's defence counsel made an enquiry with the governor of facility IZ-77/1 as to the state of the applicant's health and the possibility of the removal of the two bullets from the applicant's body in the remand prison.

15. On 3 February 2004 the applicant's grandfather applied to the Chief Department for the Execution of Sentences asking for the applicant to be transferred to a correctional establishment with adequate medical equipment.

16. On 19 March 2004 the chief surgeon of IZ-77/1 surgical unit, having examined the applicant, excluded any emergency surgical pathology, having found that the location of the two bullets did not pose any risks to the applicant's life and to the functioning of his essential organs. The applicant was recommended elective (non-urgent) surgery.

17. On 23 March 2004 the all-Russian advocacy group "For Human Rights" applied to the Preobrazhenskiy District Court of Moscow for the lifting of the applicant's custodial measure and his transfer to the Burdenko Neurosurgery Institute for the removal of the bullets from his body.

18. On 17 April 2004 the applicant was placed in Moscow remand prison IZ-77/4, where he continued to receive treatment on an outpatient basis, with the assistance of civilian medical specialists.

19. On 29 June 2004 the All-Russian Public Organisation of War and Military Service Veterans wrote to the Prosecutor General of Russia requesting him to intervene and to assist the applicant in getting medical assistance for his gunshot wounds.

20. On 2 July 2004 the head of the Department for the Execution of Sentences in Moscow replied as follows:

> "[...] At present [the applicant] is being supervised by the medical staff of [Moscow remand prison IZ-77/4].
>
> On 25 June 2004 an additional examination and consultation was provided to [the applicant] with the assistance of civilian medical specialists from [Moscow] city clinical hospital no. 20 – a neuropathologist, a traumatologist, a surgeon, and a neurosurgeon – in which [the applicant] was diagnosed with suture sinus in the region of the middle third of right thigh [...], a foreign body (bullet) in the soft tissue of the right thigh and pelvis, a wrongly healed fracture of right ankle, a healed fracture of the left ankle [and] deforming arthrosis of the ankle joints. ...

> At present, surgery on the ankle joints is not recommended owing to a chronic infection of the right thigh soft tissue.
>
> Surgical treatment on the right thigh soft tissue is required in a surgical hospital.
>
> On 29 June 2004 [the applicant] categorically refused treatment in the surgical unit of IZ-77/1 remand prison hospital and in city clinical hospital no. 20. ..."

21. A number of replies with similar content followed.

22. On 8 July 2004 the All-Russian public organisation "the Union of Armenians in Russia" applied to the Ombudsman requesting him to assist the applicant in obtaining qualified medical aid and a transfer to the Burdenko Neurosurgery Institute.

23. On 12 July 2004 the deputy head of the medical section of the Chief Department for the Execution of Sentences replied that no specialised neurosurgical treatment had been recommended for the applicant.

24. On 4 August 2004 the applicant's defence counsel made an enquiry with the Chief Department for the Execution of Sentences as to the state of the applicant's health and the possibility for him to have the two bullets removed from his body in the remand prison. The information requested was necessary to substantiate his application for release on medical grounds.

25. On 11 August 2004 the Bureau of Medical and Social Expertise examined the applicant's medical file and classified his disability as "category three" for a period of one year, until 1 September 2005.

26. On 23 August 2004 the applicant's defence counsel requested the Chief Department for the Execution of Sentences to carry out a medical examination of the applicant and to suspend his transfer to the correctional colony until the issue of the applicant's placement and treatment in a specialised medical establishment in Moscow had been settled.

27. On 27 August 2004 the applicant left IZ-77/4 in order to serve his sentence.

28. On 29 August 2004 the applicant was placed in the Saratov Region correctional colony IK-33, where he received outpatient treatment. He was examined by medical specialists on a daily basis and received etiotropic, pathogenetic and symptomatic therapy.

29. On 30 August 2004 the applicant's grandfather challenged the applicant's transfer to the correctional colony in the Saratov Region before the Department supervising compliance with lawfulness and respect for human rights by the authorities and institutions of the Department for the Execution of Sentences. He referred to the applicant's state of health and the alleged impossibility of adequate medical treatment in medical establishments within the prison system.

30. On 9 September 2004 the applicant was admitted to the surgical unit of Saratov Region prison hospital OTB-1.

31. On the same day the applicant's defence counsel requested the head of the Department for the Execution of Sentences in the Saratov Region to

carry out medical examination of the applicant necessary for deciding the issue of relief from serving his sentence on account of serious illness.

32. On 23 September 2004 the head of the Department for the Execution of Sentences in the Saratov Region replied that the applicant's state of health was satisfactory, that there were no grounds for emergency surgery, and that the issue of elective surgery would be decided upon following the applicant's examination by medical specialists.

33. On 2 November 2004 the applicant underwent elective surgery for the removal of two bullets from the soft tissue of his right thigh and the sacral region.

34. On 3 November 2004 the applicant's defence counsel asked the governor of Saratov Region prison hospital OTB-1 to carry out the medical examination of the applicant necessary for deciding the issue of his relief from serving his sentence on account of serious illness.

35. The post-operative period being uneventful, on 10 November 2004 the applicant was discharged from the Saratov Regional prison hospital OTB-1. He was transferred to Saratov Region remand prison IZ-64/1.

36. On 12 November 2004 the applicant's father complained to the Saratov Regional Prosecutor about the applicant's transfer from prison hospital OTB-1 to remand prison IZ-64/1. He asked that the applicant be transferred back to prison hospital OTB-1 for his subsequent treatment.

37. After removal of the post-operative sutures, on 13 November 2004 the applicant complained of fever, excessive sweating, dizziness and pain. In the absence of a surgeon among the staff of the remand prison's medical unit the applicant was transferred back to Saratov Region prison hospital OTB-1, where he stayed until his discharge on 9 December 2004, when he was transferred to remand prison IZ-64/1.

38. On 18 December 2004 the applicant was placed in Saratov Region correctional colony IK-7.

39. On 29 December 2004 the applicant's defence counsel challenged with the head of the Federal Service for Execution of Sentences the applicant's transfer to Saratov Region correctional colony IK-7, which had deprived him of the possibility of receiving a complete course of post-operative treatment in prison hospital OTB-1.

40. On 12 January 2005 the expert medical commission examined the quality of the medical assistance provided to the applicant and came to the conclusion that the applicant had received comprehensive examinations and treatment in compliance with the standards for provision of specialised medical assistance. The decision read as follows:

> "... **Complaints:** moderate pain in right and left ankle joints, restriction of function in these joints, pain in left knee joint on activity, restriction of function in this joint due to pain. Presence of scar tissue on the medial surface of the right thigh.
>
> **Results of objective examination:** [various observations based on an applicant's external inspection and radiographic and neurological examinations of the applicant

(by a neurologist and a neurosurgeon) and the results of CT, MRI and EMG examinations carried out on 14-15 December 2004)].

Diagnosis: Effects of a gunshot wound to the right thigh and the lumbar-sacral region of June 2003. ... Wrongly healed fracture of right ankle, a healed fracture of the left ankle. Effects of closed craniocerebral injury with astheno-neurotic syndrome.

The patient was subjected to comprehensive examination and treatment in accordance with the standards for provision of specialised medical assistance.

Recommended: walking with the help of a crutch, with the weight on the left [foot]. No further in-patient examination and treatment are required. ..."

41. On 18 August 2005 the applicant was again admitted to Saratov Region prison hospital OTB-1, where he was diagnosed with deforming osteoarthrosis of the right ankle. He was provided with treatment appropriate to his condition.

42. On 8 September 2005 the applicant again underwent an expert medico-social examination and was found to have no signs of persistent disability. The applicant's continued classification as disabled, therefore, was not required.

43. On 7 October 2005 the applicant was discharged from Saratov Region prison hospital OTB-1.

44. On the same day he was admitted to correctional colony IK-33.

45. On 9 October 2005 the applicant was placed in Saratov Region correctional colony IK-7.

46. On 14 November 2005 the applicant was transferred back to correctional colony IK-33.

47. From 16 November 2005 up to his release the applicant was held again in Moscow remand prison IZ-77/1, where he was further diagnosed with, and treated for, osteochondrosis of the thoracic spine, lumbar osteochondrosis and astheno-neurotic syndrome.

48. On 23 January 2006 the applicant's parents applied to the governor of Moscow remand prison IZ-77/1 asking for the applicant's transfer back to prison hospital OTB-1, without success.

49. On 18 July 2006 the applicant was released from prison.

B. Relevant domestic law

50. The federal law on the detention of persons suspected of and charged with criminal offences (Federal Law no. 103-FZ of 15 July 1995) provides that inmates are entitled to medical assistance (section 17). If an inmate's health deteriorates, the medical officers of the remand prison are obliged to examine him promptly and inform him of the results of the examination in writing. If the inmate requests to be examined by staff of other medical institutions, the administration of the detention facility is to organise such

an examination. If the administration refuses, the refusal can be appealed against to a prosecutor or court. If an inmate is suffering from a serious disease, the administration of the remand prison is obliged immediately to inform the prosecutor, who can carry out an inquiry into the matter (section 24).

COMPLAINT

51. The applicant complained that the domestic authorities had subjected him to inhuman and degrading treatment by their failure to provide him with adequate medical assistance throughout his stay in various detention and correctional facilities. He referred to Article 3 of the Convention, which reads as follows:

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

THE LAW

A. The parties' submissions

52. The Government raised the objection of non-exhaustion of the domestic remedies by the applicant. They noted, in particular, that it had been open to the applicant to claim damages for the alleged failure of the domestic authorities to provide him with the requisite medical assistance. However, he had not availed himself of this remedy. Nor had he provided any valid reasons for not complaining about the allegedly inadequate medical assistance to a domestic court. The Government maintained that, in any event, throughout the applicant's stay in detention and correctional facilities he had been regularly examined by highly qualified specialist doctors (physician, radiologist, surgeon, neurosurgeon, psychiatrist, neurologist, neuropathologist, ophthalmologist, anaesthesiologist, resuscitation specialist, and so on), including doctors from civilian medical institutions. The applicant had received both inpatient and outpatient treatment which had been appropriate for his state of health; he had been provided with all necessary medicines. The applicant had undergone all sorts of laboratory tests, X-ray examination, magnetic resonance tomography, rheoencephalography, echoencephaloscopy, ultrasonography, electrocardiography, electromyography, electroneuromyography, and CT and MRI examinations. The applicant's allegation that his health had

deteriorated while he had been held in detention and serving his sentence in the correctional facilities was disproved by the applicant's medical file. Moreover, the applicant showed no signs of persistent disability in his examination by the Medical and Social Expertise Bureau in 2005. The Government concluded that the domestic authorities had, therefore, complied with their obligation under Article 3 of the Convention.

53. The applicant maintained his complaint. Regarding the issue of exhaustion, he submitted that the Government had not provided any evidence showing that the remedy suggested by them was an effective one. The applicant noted that in the three years following his arrest he had been held in three detention facilities and two correctional colonies, that the medical assistance there had been equally inadequate, and that, regard being had to his poor health, he could not have been expected to bring proceedings against all the above-mentioned facilities. The applicant further noted that his defence counsel, his relatives and various associations had applied to the domestic authorities with numerous requests that he be provided with adequate medical treatment. The issue of his health had further been raised on many occasions before the court in the course of the criminal proceedings against him and during the examination of the issue of extension of his detention. Yet none of this had led to any appropriate measures being taken by the domestic authorities.

B. The Court's assessment

54. The Court notes that the Government raised an objection of non-exhaustion.

55. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to first use the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

56. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and

offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further reiterates that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI).

57. The Court recalls that where an applicant's complaint stems not from a known structural problem, such as general conditions of detention, but from an alleged specific act or omission by the authorities, the applicant is required, as a rule, to exhaust domestic remedies in respect of that complaint.

58. In the context of Russian cases the Court has previously established that applicants complaining of a lack of medical assistance in State custody should first raise their complaints with the competent domestic authorities, including the administration of the detention facility, the prosecutor and the relevant court (see, most recently, *Skorkin v. Russia* (dec.), no. 7129/03, 27 September 2011, and *Vladimir Sokolov v. Russia*, no. 31242/05, §§ 65-71, 29 March 2011; and also *Popov and Vorobyev v. Russia*, no. 1606/02, §§ 65-67, 23 April 2009; *Sopot v. Russia* (dec.), no. 4575/07, 16 September 2010; *Solovyev v. Russia* (dec.), no. 76114/01, 27 September 2007; and *Tarariyeva v. Russia* (dec.), no. 4353/03, 11 October 2005). Where the applicants are no longer held in the detention facility where it was alleged that no adequate medical assistance had been made available to them, a civil claim for damages is capable of providing redress in respect of their complaints and offers reasonable prospects of success (see *Buzychkin v. Russia*, no. 68337/01, § 83, 14 October 2008, and, more recently, *Gadamauri and Kadyrbekov v. Russia*, no. 41550/02, §§ 34-35, 5 July 2011).

59. Turning to the circumstances of the present case, the Court notes that prior to his release from prison in 2006 the applicant himself, his defence counsel, his relatives and various associations submitted numerous enquiries and requests relating to the issue of his state of health. In particular, they enquired about the possibility of removal of the bullets from the applicant's body in the remand prison, requested the transfer of the applicant to civilian hospitals, the lifting of the custodial measure, and his transfer to a correctional establishment with adequate medical equipment. They further challenged his transfers to various correctional and detention facilities and requested the carrying out of the medical examination necessary for filing an application for his early release from serving his sentence. The Court observes, however, that on no occasion was a complaint of allegedly inadequate medical assistance brought before the domestic courts.

60. The Court further observes that, having been released from prison in 2006, the applicant also made no attempts to bring a civil action for

damages resulting from his allegedly inadequate medical treatment in the medical establishments within the prison system.

61. Therefore, having failed to resort to a domestic court either while still within the authorities' control or after his release, the applicant stripped the State of the opportunity to remedy the alleged violation of his rights guaranteed by Article 3 of the Convention. An examination of the case as submitted does not disclose the existence of any special circumstances which might have absolved the applicant according to the generally recognised rules of international law from exhausting that domestic remedy at his disposal. The applicant's complaint must therefore be dismissed under Article 35 §§ 1 and 4 of the Convention for failure to exhaust domestic remedies.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Nina Vajić
President