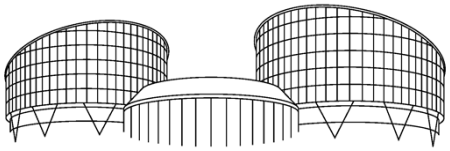

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BADALYAN v. AZERBAIJAN

(Application no. 51295/11)

JUDGMENT

Art 3 • Degrading treatment • Absence of satisfactory and convincing explanation showing applicant's serious mental injuries not due to conditions of and treatment undergone during detention Art 5 § 1 • Unlawful detention of applicant at undisclosed site for twenty-two months

STRASBOURG

22 July 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Badalyan v. Azerbaijan,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Jovan Ilievski,
Ivana Jelić,
Arnfinn Bårdsen, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application against the Republic of Azerbaijan 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 Artur Badalyan ("the applicant"), on 8 August 2011;

the decision to give notice to the Azerbaijani Government ("the respondent Government") of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Armenian Government, who had exercised their right to intervene in the proceedings before the Court in accordance with Article 36 § 1 of the Convention;

Having deliberated in private on 15 June 2021,

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

INTRODUCTION

1. The application concerns alleged ill-treatment during detention in violation of Article 3 of the Convention and unlawful detention in violation of Article 5.

THE FACTS

I. THE PARTIES

2. The applicant was born in 1978 and lives in Haghartsin in the Tavush region of Armenia. He was represented by Mr E. Marukyan and Ms T. Matinyan, lawyers practising in Vanadzor.

3. The Azerbaijani Government were represented by their Agent, Mr Ç. Əsgərov.

II. UNDISPUTED FACTS

4. On 9 May 2009 the applicant disappeared and was captured by the Azerbaijani forces. His relatives contacted the Armenian authorities, after which he was registered as a missing person in Armenia and a search for him was undertaken. However, his whereabouts remained unknown to his family and the Armenian authorities until 5 November 2010 when he was registered by the International Committee of the Red Cross (ICRC) as an Armenian captive held in Azerbaijan. Thereafter the applicant was regularly visited by the ICRC in detention until 17 March 2011 when he was released to the Armenian authorities through the mediation of the ICRC as part of an exchange of captives. The exchange was made in the Agdam region.

III. FACTS AS SUBMITTED BY THE APPLICANT

5. On 9 May 2009 the applicant, allegedly a civilian with no military assignment, went with a group of friends to the village of Navur near the town of Berd, close to the border with Azerbaijan, to pick mushrooms in the forest. According to witness statements from others in the group, the applicant disappeared. He claims that, until then, he had always been completely healthy, with no physical or psychological problems.

6. On 11 May 2009 the applicant was registered as a missing person by the Armenian police, which conducted an investigation with the help of a local military unit. They searched the relevant area and interviewed villagers. Allegedly, the mushrooms picked by the applicant were discovered about 5-6 kilometres from the Azerbaijani border, but nothing else was found. On 7 July 2009 the Department of Criminal Investigation in Tavush opened a criminal investigation into the applicant's disappearance. The investigation was suspended two months later as no person suspected of having committed an offence had been identified. As from October 2010 the State Commission on Issues of War Prisoners, Hostages and the Missing Persons was seized with the applicant's case; on 8 November 2010 it received information from the ICRC that it was visiting the applicant in detention in Baku.

7. Following his arrest by the Azerbaijani forces, the applicant was held captive for 22 months in different military facilities. He claims that he was not given enough food and was often not allowed to go to the toilet, thus having to care for his needs in the cell. Moreover, he was subjected to harsh torture and mental anguish, as he was deemed to be a military prisoner, and was regularly harassed to divulge information. He was often beaten on his legs, so that he could not feel or move them. Electric wires were frequently attached to his fingers and the power switched on, causing severe pains. His cell door was hit with metallic objects, as a result of which he now suffers from a hearing disorder.

8. Furthermore, he was not informed of the reasons for his detention in a language that he understood, he was never brought before an officer of the law and he was deprived of the possibility to challenge the lawfulness of his detention. He alleges that, as a civilian, he should have been released immediately by the Azerbaijani authorities.

9. The applicant claims that, during his captivity in Azerbaijan, his health condition was never recorded or documented.

10. On 18 March 2011, the day after his release, the applicant was hospitalised and examined in Armenia. According to a certificate issued by the military medical department of the Ministry of Defence, he was diagnosed with neurasthenia, a psychopathological condition, with symptoms of depression. When he was admitted he suffered from, among other things, fear, stress, anxiety and depression and complained of fatigue as well as pains in his arms and legs. He was discharged on 29 March, after eleven days, apparently in an improved state, with a recommendation that he be placed under supervision of a therapist or psychologist.

11. On 26 May 2011 the applicant's lawyer contacted the ICRC in Yerevan, asking for information about the applicant's detention and about the date when the ICRC was informed of his captivity. The ICRC replied the following day that, due to its institutional policy of confidentiality, it was not in a position to provide the requested information.

12. The applicant was hospitalised again on 27 June 2011, at the Centre for Mental Health Stress of the Medical Rehabilitation Centre in Yerevan. He was examined and treated by a neurologist, a proctologist, and a psychologist.

According to a psychiatric evaluation of 29 June, the applicant complained about headaches, insomnia, weakness and fear. He also stated that he heard voices in his ears which talked to him and ordered him what to do and say. He claimed that "the Azerbaijanis" had put cameras and telephones in his home in order to contact and control him. During his detention he had also been forced to swallow some balls which placed devices of control in his stomach. He was afraid to approach his wife, whom he did not trust. According to his relatives, he had an unstable mood and would occasionally be aggressive towards his wife and children and other relatives.

Following his treatment, the applicant was diagnosed with a chronic delusional disorder and a protracted reactive paranoia as well as a spinal disc hernia. He left the centre after a month, on 27 July, at his own request. According to the centre, his pathological syndrome had been slightly reduced.

13. The applicant received further treatment at the centre for similar symptoms and complaints during the following four years for periods of 3-4 weeks at a time: 13 February – 5 March 2012, 28 February – 22 March 2013, 13 May – 6 June 2014 and 22 May – 16 June 2015. While a slight

improvement in the applicant's condition was observed during the second and third periods of treatment, following the hospitalisation in 2015 he was diagnosed with a worsening state of schizophrenia of a paranoid character and was recommended compulsory inpatient care.

14. In October 2011, following expert examinations, the applicant was granted state disability benefits on account of his mental health condition. He was considered unfit for work and unable to control himself. His entitlement to disability benefits was confirmed in 2012, 2013, 2014 and 2015, the latter decision being valid until 15 December 2016.

IV. FACTS AS SUBMITTED BY THE RESPONDENT GOVERNMENT

15. The respondent Government claimed that the applicant illegally crossed the border into Azerbaijan before he was captured. At the time, he expressed a wish to be transferred to a third country, as his conditions of life in Armenia were severe. Therefore, his sojourn in Azerbaijan was prolonged while the relevant authorities started the process of a transfer via the ICRC. However, at a later stage, he changed his mind and wanted to return to Armenia.

16. Allegedly, the applicant was detained as a member of the Armenian armed forces and a saboteur. He was held as a prisoner of war pursuant to the 1949 Geneva Convention relative to the Treatment of Prisoners of War and his release came about as part of an exchange of prisoners of war between Azerbaijan and Armenia.

17. The Government claimed that the applicant was under medical control throughout his captivity in Azerbaijan and that he was not ill-treated. The medical documents submitted by them which consist of medical journals and certificates show that the applicant underwent a medical examination and had his blood and urine tested between 19 and 29 November 2009, that his teeth were examined on 6 November 2010 and that further medical examinations were made on 28 February and 3 March 2011. No physical health problems were found. Furthermore, a psychiatric examination was conducted on 7 March 2011. In this respect a transcript from a medical journal with the heading "Doctor's note" contains two sentences stating that no psychopathological symptoms had been detected and that there had been no signs of mental illness.

V. FACTS AS SUBMITTED BY THE ARMENIAN GOVERNMENT, THIRD-PARTY INTERVENER

18. Upon the applicant's return to Armenia, the criminal investigation initiated in July 2009 (see paragraph 6 above) was re-opened. According to a decision of 23 March 2011 by a senior investigator of the Tavush police investigation department, the applicant was interviewed by the police on

19 March 2011. He stated that, on 9 May 2009, he and his friends had gone in different directions into a forest in search of mushrooms. At around 3 p.m. he had been approached by four strangers who had first asked for a cigarette in Armenian and then proceeded to tie up his hands while talking Azerbaijani. They had forcibly moved him across the Azerbaijani border and handed him over to the Azerbaijani authorities. The applicant further stated that he knew the forest very well and that he had not crossed the border but had been kidnapped on Armenian territory. In statements given to the police, the friends that had accompanied the applicant to the forest declared that they had all been unarmed. Concluding that a criminal offence under the Armenian Criminal Code had been committed, the senior investigator decided to transfer the criminal case and file to the National Security Service.

THE LAW

I. PRELIMINARY ISSUE: THE COURT'S JURISDICTION AND THE APPLICABILITY OF THE CONVENTION IN GENERAL

A. The parties' submissions

19. The Azerbaijani Government maintained that the applicant was captured as a member of the Armenian armed forces and, as military captives on both sides, should be considered as a prisoner of war. The 1994 ceasefire agreement between Armenia and Azerbaijan could not be considered a peace agreement. Furthermore, the relations between the countries were tense, borders were closed and frequent armed incidents occurred. Consequently, the events complained of were to be examined under international humanitarian law and the applicant – while in detention – should have addressed the ICRC which has a specific mandate under the Geneva Conventions of 12 August 1949. As the present application belonged to the sphere of international humanitarian law, it could not be the subject of the Court's jurisdiction.

20. The applicant submitted that he is and was a civilian and not a member of or in any other way affiliated with the Armenian armed forces. The Azerbaijani Government had not produced any evidence supporting their contention. Moreover, there was no state of war or resort to hostile acts from any side during the period of the applicant's detention that could bring the situation into the sphere of international humanitarian law. The parties were bound by the 1994 ceasefire agreement.

21. The applicant further pointed out that, even in international armed conflicts, the Convention continued to apply, international human rights law and international humanitarian law being complementary. While the ICRC had been given a mandate to act in armed conflicts, for instance by

providing humanitarian assistance to victims, it could not be considered a dispute resolution body, able to take decisions on complaints such as those raised by the applicant.

22. Agreeing with the applicant, the Armenian Government submitted that there was no armed conflict taking place when the applicant was captured by Azerbaijani forces. It is the situation on the ground that determines whether there is an armed conflict and thus whether a captive could be considered a prisoner of war. The respondent Government had failed to submit any factual data to support their contention that there was an armed conflict on the border between Armenia and Azerbaijan at the relevant time. Moreover, the friends that had accompanied the applicant on the day of his capture had declared that they had all been unarmed. Accordingly, international humanitarian law was not applicable in the present case. Furthermore, even if the applicant's detention had occurred in the context of an international armed conflict, this would not have suspended the application of international human rights law, in particular the Convention, or the jurisdiction of the Court.

B. The Court's assessment

23. The Court notes that it has already examined and dismissed a similar objection by the respondent Government in *Saribekyan and Balyan v. Azerbaijan* (no. 35746/11, §§ 36-41, 30 January 2020). It considers that the present case does not disclose a material difference and sees no reason to decide otherwise. Therefore, it finds that no facts have been presented which indicate that the Convention is not applicable in the present case or that the Court has no jurisdiction. The respondent Government's objection must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

24. The applicant argued that he had been ill-treated while detained and relied on 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. The parties' submissions

25. The Azerbaijani Government asserted that the applicant had the right to challenge in the Azerbaijani courts the procedural acts and decisions of the prosecuting authority. However, neither he nor his relatives or the Armenian authorities had complained about the alleged violations of his rights or even attempted to address the Azerbaijani authorities after the

detention, not even through diplomatic channels. The applicant had thus failed to exhaust effective remedies.

26. The applicant stated that there was no available effective remedy for him to exhaust in Azerbaijan and that it had been impossible for him to contact a lawyer in Azerbaijan who could have made submissions on his behalf before that country's legal instances. He referred to the conclusions drawn by the Court in the case of *Sargsyan v. Azerbaijan* ([GC], no. 40167/06, §§ 117 and 119, ECHR 2015).

27. The Armenian Government submitted that, due to the unresolved conflict between Armenia and Azerbaijan, there were obstacles of a practical and diplomatic nature for Armenians to gain access to any remedy in Azerbaijan, let alone an effective one. The respondent Government had not specified any domestic authority that could have been addressed or any proceedings that could have been initiated in the applicant's case. Referring to the case of *Saribekyan and Balyan v. Azerbaijan* (cited above, §§ 21, 27, 28 and 73), the Armenian Government further pointed out that, as that case showed, a request by the Armenian Prosecutor-General to the same official in Azerbaijan under the Commonwealth of Independent States (CIS) Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases would not have been an effective remedy as the request would have remained unanswered.

2. The Court's assessment

28. Under Article 35 § 1 of the Convention, 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 and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV, and *Sargsyan v. Azerbaijan*, cited above, § 116).

29. The Court also reiterates that it is incumbent on the Government pleading non-exhaustion to satisfy it 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, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see, among many other authorities, *Molla Sali v. Greece* [GC], no. 20452/14, § 89, 19 December 2018, and the references therein).

30. While the present case does not concern events relating to the conflict between Armenia and Azerbaijan as such, the Court considers nevertheless that certain observations made to describe the general context of relations between Armenia and Azerbaijan in the *Sargsyan* case are relevant also in the present case. Neither at time of the relevant events, nor at any point after that, there have been diplomatic relations between Armenia and Azerbaijan. Furthermore, borders are closed and postal services are not viable between the two countries. In such a situation it must be recognised that there may be obstacles to the proper functioning of the system of the administration of justice. In particular, there may be considerable practical difficulties in bringing and pursuing legal proceedings in the other country (*Sargsyan v. Azerbaijan*, cited above, § 117).

31. In the present case, the respondent Government have not shown that the applicant, whose whereabouts remained unknown to his family for one year and almost six months (see paragraph 4 above), had any opportunity to communicate with the outside world and contact a lawyer while in detention in Azerbaijan. While it is true that he was eventually released and could return to Armenia, the respondent Government have not provided any example of a domestic case or remedy which would show that individuals in the applicant's situation are able to seek redress before the Azerbaijani authorities. On the contrary, the refusal of those authorities to give any assistance or even to reply to the request of the Armenian Prosecutor-General under the 1993 CIS Convention in the similar case of *Saribekyan and Balyan* (cited above) rather points to the unavailability of effective remedies in Azerbaijan for a person in the applicant's situation.

32. Consequently, reiterating its conclusions in *Saribekyan and Balyan*, the Court considers that the respondent Government have failed to discharge the burden of proving the availability to the applicant of a remedy capable of providing redress in respect of his Convention complaints and offering reasonable prospects of success. The Government's objection concerning the exhaustion of domestic remedies is therefore dismissed.

33. Furthermore, the Court considers, in the light of the parties' submissions, that the complaint under Article 3 of the Convention raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a). No other ground for declaring the complaint inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

34. The applicant maintained that he had been taken into custody in good health and found to be injured at the time of release and that it was therefore, in accordance with the established practice of the Court following *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, incumbent on the respondent State to provide a plausible explanation of how the injuries had been caused, failing which an issue under Article 3 would arise. The respondent State should therefore have conducted an effective investigation into the allegations of ill-treatment. The applicant had been unable to obtain any evidence because during the 22 months of detention, his health conditions were never recorded or documented.

35. The respondent Government emphasised that the applicant's allegations of ill-treatment were supported only by medical documents provided by Armenian agencies. No causal link had been demonstrated to show that he had been tortured. The ICRC had conducted regular visits to the applicant and managed to supervise his detention conditions. No reports on ill-treatment had been submitted either to or by that organisation. Thus, the applicant could not have been treated in a manner causing such a degree of suffering so as to amount to a violation of Article 3 of the Convention.

36. The Armenian Government emphasised that prior to his being captured, the applicant had not suffered from any kind of mental diseases. They submitted that he had been declared fit for military service in 1997 and served until 1999. They insisted that there existed documented evidence on the applicant's serious neuropsychological disorder subsequent to his release, including schizophrenia of a paranoid type, pain in his arms and legs and that there was an absence of any plausible explanation by the respondent Government as to how these health problems had been caused. This proved that the applicant had been subjected to treatment that had amounted to an obvious and grave violation of Article 3 of the Convention. The Armenian Government also made submissions concerning discrimination of Armenians in Azerbaijan and emphasised the wider context of the general policy of the authorities of Azerbaijan.

2. The Court's assessment

(a) General principles

37. The Court has set out the general principles in, *inter alia*, *Ireland v. the United Kingdom*, 18 January 1978, §§ 162-163, Series A no. 25; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 139-42, 10 January 2012; *Idalov v. Russia* [GC], no. 5826/03, §§ 91-95, 22 May 2012; *Georgia v. Russia (I)* [GC], no. 13255/07, § 192, ECHR 2014, and

recently reiterated them in *Georgia v. Russia (II)* [GC], no. 38263/08, § 240, 21 January 2021, as follows:

> "... Article 3 enshrines one of the most fundamental values of democratic societies. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). 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, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).
>
> Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011).
>
> In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).
>
> When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, § 50, 8 November 2005)."

38. Furthermore, the Court has established the following general principles in respect of the standard and burden of proof relating to allegations of ill-treatment contrary to Article 3 of the Convention (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 82-83, ECHR 2015):

> "82. Allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25; *Labita*, cited above, § 121; *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 117, ECHR 2006-IX; and *Gäfgen*, cited above, § 92).
>
> 83. On this latter point the Court has explained that 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. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see *Salman*, cited above, § 100; *Rivas v. France*, no. 59584/00, § 38, 1 April 2004; and also, among other authorities, *Turan Cakir v. Belgium*, no. 44256/06, § 54, 10 March 2009; *Mete and Others v. Turkey*, no. 294/08, § 112, 4 October 2011; *Gäfgen*, cited above, § 92; and *El-Masri*, cited above, § 152). In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see, among other authorities, *El-Masri*, cited above, § 152). That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (see, among other authorities, *Salman*, cited above, § 99)."

(b) Application of those principles to the facts of the case

39. The Court observes that it is undisputed that the applicant was in the respondent State's captivity during a period of 22 months, from 9 May 2009 until 17 March 2011 (see paragraph 4 above). It also observes that what has been presented to the court as documentary evidence is principally medical information.

40. As to the applicant's health situation before his detention, the respondent Government have not contested that he was declared fit for military service in 1997 and that he served until 1999. However, that was still ten years prior to the events in case and the applicant has not presented medical documents concerning his health condition between 1999 and his detention by the Azerbaijani authorities.

41. With regard to the situation during the applicant's detention, the respondent Government have pointed to medical exams having been carried out. As to the applicant's mental health, the respondent Government have, for the first time in their additional comments to the applicant's response to their observations before the Court, adduced a transcript from a medical journal, dated 7 March 2011, a little over a week before the applicant's release, stating that no psychopathological symptoms or signs of mental illness had been detected (see paragraph 17 above).

42. Turning to the applicant's health situation upon his release, medical reports provided show that he suffered from chronic delusional disorder and delayed reactive paranoia and that he was treated for 29 days in 2011 (see paragraph 12 above). His mental health condition deteriorated further and in 2015 he was diagnosed with paranoid schizophrenia (see paragraph 13 above). The applicant was found to qualify for disability benefits (see paragraph 14 above).

43. The Court observes that the applicant has submitted that his mental condition at the time of his release was a psychological sign of ill-treatment of both a physical and psychological nature and that he has not presented proof of physical injuries. However, before the Court, it has not been disputed that the mental health issues described above, if they were the

result of the manner in which the person diagnosed with them has been treated while in detention, are indicative of ill-treatment contrary to Article 3 of the Convention (see paragraph 37 above).

44. In the light of the materials placed before it, the Court finds that the applicant has established a *prima facie* case that his symptoms of considerable mental health injuries, detected immediately after his release, were in relation to his time in the respondent State's captivity, whether the later deterioration was a direct consequence of this or not. Furthermore, it notes that the applicant has given a detailed and consistent account of the facts complained of and has provided the only pieces of evidence available to him, notably medical records from examinations upon his release. Therefore, the respondent Government must, in accordance with the general principles cited above (see paragraph 38), provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim.

45. The respondent Government, who alone have access to any other information capable of corroborating or refuting allegations, have in response to the applicant's allegations argued that: (i) the applicant had been captured and held alive and safe, and released safely through negotiations with the cooperation of the ICRC; (ii) the applicant's allegations of ill-treatment were supported only by medical documents provided by Armenian agencies; (iii) there was no causal link to suggest that the applicant had been tortured; (iv) being held in captivity for such a long time as 22 months under constant torture, bad feeding and deprivation of sleep, as alleged by the applicant, would have resulted in much more severe health consequences than those presented by him; and (v) the ICRC had conducted regular visits to supervise the applicant's detention conditions without any reports on ill-treatment having been submitted to them or by them.

46. As to the latter argument, the Court observes that the ICRC for confidentiality reasons did not release information about the circumstances of the applicant's detention at his lawyer's request (see paragraph 11 above). With regard to the other arguments, the Court does not consider that they either amount to a satisfactory and convincing explanation supported by evidence as required under the Convention (see paragraphs 44 and 38 above). The Court notes in this regard that the Government did not benefit from the evidence that investigation might have produced since the Government have not shown that any meaningful investigation of the applicant's allegations ever took place.

47. The Court further notes that the Government did not provide, including in the proceedings before the Court, information about the places of the applicant's detention, the conditions of his detention and the daily regime to which he was subjected while in detention. The fact that no information about the applicant's whereabouts ever reached his family prior to his registration as a captive by the ICRC, almost a year and six months

after his initial detention (see paragraph 4 above), is also a fact from which inferences can be drawn regarding the manner in which he was treated and its consequences for his mental health.

48. In the light of the above, the Court finds that the respondent Government have failed to provide a satisfactory and convincing explanation to show that the applicant's serious mental injuries identified immediately upon his release and diagnosed later were neither entirely, mainly or partly caused by the conditions of his detention and the treatment he underwent while in the respondent State's captivity. It therefore concludes that there has been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

49. The applicant argued that he had been deprived of his liberty in breach of Article 5 § 1 of the Convention and that there had been a violation of procedural rights pursuant to paragraphs 2 to 4 of that provision, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. ...”

A. Admissibility

50. The respondent Government’s objection to the admissibility of the application on the ground that domestic remedies had not been exhausted, and the applicant’s and the Armenian Government’s arguments made in response, included also the complaint under Article 5 of the Convention (see paragraphs 25-27 above).

51. For the same reasons as provided in respect of that objection with regard to Article 3 of the Convention (see paragraphs 28-32 above), and noting, in addition, that the respondent Government have not shown that there existed any decision ordering the applicant’s detention against which he could have appealed, the Court dismisses the objection also with regard to the complaint under Article 5.

52. Furthermore, the Court considers, in the light of the parties’ submissions, that the complaint under Article 5 of the Convention raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a). No other ground for declaring the complaint inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties’ observations

53. The applicant emphasised that the respondent Government had not denied the facts concerning the applicant’s unlawful detention; his never having been informed of the reasons for his arrest in a language which he understood; his not having been brought before a judge; and his not having had any effective procedure to challenge the lawfulness of his detention, but had stated that those measures had not been taken because the applicant had been treated as a prisoner of war. The applicant could not, however, be considered as a prisoner of war.

54. The respondent Government submitted that the applicant had been detained as a prisoner of war and held according to the 1949 Geneva Convention on prisoners of war. His claim that he had lost his way while looking for mushrooms (compare the applicant’s version of the events in paragraph 5 above) in an area at the border to a State with which military conflict had occurred was highly doubtful. If he had not been a military captive, he would have been arrested and sentenced for a number of crimes such as illegal border crossing and espionage.

55. The Armenian Government maintained that even if the safeguards provided by the norms of international humanitarian law applied to the case, there was no evidence to indicate compliance with those norms, either. There had been a violation of the applicant's right to liberty and security guaranteed by Article 5 of the Convention notwithstanding.

2. The Court's assessment

56. As to the general principles, the relevant passage from the *El-Masri v. the former Yugoslav Republic of Macedonia* judgment ([GC], no. 39630/09, ECHR 2012), recently reiterated in *Georgia v. Russia (II)*, cited above, § 241, reads as follows:

> "230. The Court notes at the outset the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It is for that reason that the Court has repeatedly stressed in its case-law that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness (see *Chahal*, cited above, § 118). This insistence on the protection of the individual against any abuse of power is illustrated by the fact that Article 5 § 1 circumscribes the circumstances in which individuals may be lawfully deprived of their liberty, it being stressed that these circumstances must be given a narrow interpretation having regard to the fact that they constitute exceptions to a most basic guarantee of individual freedom (see *Quinn v. France,* 22 March 1995, § 42, Series A no. 311)."

57. The Court notes that the respondent Government have not put forward any materials or concrete information to show that the applicant was to be regarded as a prisoner of war. It is also for that reason that the Court above has dismissed the respondent Government's argument that the Convention as a whole is inapplicable (see paragraphs 19 and 23 above). No other arguments have been advanced to the effect that Article 5 of the Convention does not apply to the applicant's case, and the respondent Government have not argued that his detention was in conformity with any of the sub-paragraphs in Article 5 § 1 or that the applicant was afforded any of the procedural guarantees in the following paragraphs. In the circumstances of the instant case, the foregoing observations suffice for the Court to conclude that there has been a violation of that provision, too.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 8,500 euros (EUR) in respect of pecuniary damage. Furthermore, he claimed EUR 44,000 in respect of non-pecuniary damage relating to the violation of Article 3 of the Convention, and EUR 32,000 in respect of non-pecuniary damage inflicted upon him by way of the violation of Article 5. The applicant did not submit any claim in respect of costs and expenses.

60. The respondent Government contested the claim in respect of pecuniary damage on the grounds that there had been no causal link to any violation of the applicant's rights and that the applicant had not submitted any reasonable evidence of the alleged financial loss. They maintained that the applicant's calculation of minimum wages had no relevance to his case since the applicant had not earned any money and had been unemployed at the time in question. As to the claim in respect of non-pecuniary damage, they submitted that it was unsubstantiated and unreasonable. They also emphasised that the applicant had deliberately taken a risk by crossing the border into Azerbaijan and argued that a finding of a violation would constitute sufficient reparation.

61. The Court does not consider that it has sufficient information to discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention;

3. *Holds*, unanimously, that there has been a violation of Article 5 of the Convention;

4. *Holds*, by six votes to one,
   (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, EUR 30,000 (thirty-thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Síofra O'Leary
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Mourou-Vikström and Jelić is annexed to this judgment.

S.O'L.
M.K.

CONCURRING OPINIONS OF JUDGES MOUROU-VIKSTRÖM AND JELIČ

(Translation)

We fully agree with the Chamber's finding of a double violation and with the reasoning adopted in reaching that conclusion.

The Chamber held that in the absence of any trace of physical injuries on the applicant after his release, the psychiatric disorders with which he was diagnosed had to be regarded as the result of the physical ill-treatment and emotional humiliation and trauma suffered during the months he had spent in detention.

Nevertheless, we consider it important to clarify one specific point concerning schizophrenia, a condition whose underlying causes are not yet fully known to researchers.

We note that the applicant was released on 17 March 2011.

His mental health problems were confirmed at two different stages:

- On 29 June 2011 the applicant underwent a psychiatric evaluation, which resulted in a diagnosis of chronic delusional disorder and protracted reactive paranoia. His mental health deteriorated over the years.

- In 2015 he was diagnosed with paranoid schizophrenia.

In our view, depending on how the Chamber judgment is read, in particular paragraph 44, there may still be some doubt as to the link established between the detection of schizophrenia and the ill-treatment suffered in detention.

Extreme caution is required when examining the causal links between ill-treatment and a condition as complex as schizophrenia. The trigger factors are the subject of in-depth studies dealing with such aspects as genetics and use of psychotropic substances. It cannot be established from the medical data currently available that this mental illness may result from emotional trauma, however violent and destabilising such trauma may have been. However, where the condition is pre-existing, it may enter acute phases following exposure of the subject to intense psychological trauma.

This clarification is, of course, not intended to take the place of a medical opinion on the applicant's state of health, but rather to maintain a very cautious approach and remove any ambiguity in the Chamber's position regarding the factors that may trigger the symptoms of schizophrenia, a condition that remains the subject of heated debate among experts.