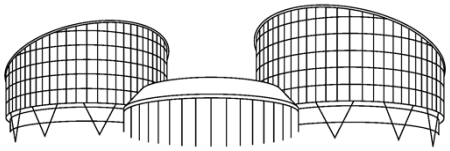

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF JHANGIRYAN v. ARMENIA

(Applications nos. 44765/08 and 10607/10)

JUDGMENT

STRASBOURG

18 May 2021

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

In the case of Jhangiryan v. Armenia,

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

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 44765/08 and 10607/10) 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 Vardan Jhangiryan ("the applicant"), on 16 July 2008 and 15 January 2010 respectively;

the decision to give notice to the Armenian Government ("the Government") of the complaints concerning the alleged use of unnecessary force during the police operation and the alleged failure of the authorities to conduct an effective investigation therein, the alleged failure to ensure timely and proper medical assistance when under arrest, the alleged lack of adequate treatment and care for the applicant while in detention as well as the alleged lack of adequate conditions for detention, the applicant's forced participation in the trial despite his poor health and the alleged lack of proper conditions for his transportation, the alleged unlawfulness of the applicant's detention from 24 April until 16 June 2008 and the alleged lack of effective domestic remedies against the alleged use of unnecessary force and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 13 April 2021,

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

INTRODUCTION

1. The applicant, who was suffering from spinal tuberculosis and had problems of mobility, was stopped by the police while driving a car and arrested. He was subsequently prosecuted and convicted for using violence against a police officer. The case concerns the applicant's allegations of use of excessive force during his arrest, failure by the authorities to investigate the matter effectively, lack of timely and adequate medical assistance in detention and his forced participation in court hearings despite his poor health, in breach of the requirements of Article 3 of the Convention. The applicant's complaints also concern the lawfulness of his detention, as required by Article 5 § 1 of the Convention and the alleged lack of an effective domestic remedy in respect of his complaint concerning the use of excessive force during his arrest, as required by Article 13 of the Convention.

THE FACTS

2. The applicant was born in 1960 and lives in Yerevan. He was represented by Ms L. Sahakyan, Mr Y. Varosyan and Mr A. Ghazaryan, lawyers practising in Yerevan.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights.

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

5. On 19 February 2008 a presidential election was held in Armenia. After the election the opposition, led by the main opposition candidate, Levon Ter-Petrosyan, started to hold mass protest rallies and demonstrations.

6. On 22 February 2008 the applicant's brother, G.J., who was Deputy Prosecutor General at that time, made a speech at an opposition rally held in Yerevan. The next day, the incumbent President issued a decree dismissing him from the post of Deputy Prosecutor General.

I. THE POLICE OPERATION OF 23 FEBRUARY 2008

A. The applicant's version

7. According to the applicant, on 23 February 2008 at around 10 p.m. he and G.J. were returning to Yerevan in a car driven by the applicant. After stopping at the intersection near Argavand village, they were attacked by a group of unknown masked and armed persons who, as it was later found out, were police officers. Those persons crashed their unmarked vehicle into the front of their car, blocking their way, got out of it and, firing their guns, surrounded their car. At the same time they also surrounded the second car accompanying them, which was driven by A.S., the applicant's friend. L.P., G.J's driver, K.H., G.J's assistant, and S.H., who appears to have been the applicant's employee, were riding in the second car. G.J. left the car, introduced himself and asked the persons what they wanted. The masked persons then seated G.J. in their vehicle. Then, in an effort to get the applicant out of the car, they struck several blows on the driver's side door window and broke it. When the applicant, who was wearing a medical corset because of mobility problems as a result of spinal tuberculosis, opened the car door, the persons who had surrounded his car hit him in the face with a gun butt, dragged him out and threw him to the ground, in a kneeling position, disregarding G.J.'s warnings that he suffered from a spinal disease. During that time police officers fired their guns and injured the applicant. Two police officers, namely G.M. and T.K., were also injured by the shots. Thereafter, shooting also continued near the police officers'

vehicle. Then the applicant, G.J., L.P. and K.H. were taken to the Principal Department for the Fight against Organised Crime (hereafter, the PDFOC) whose police officers had carried out the operation (hereafter, the police operation).

8. The applicant claims that the operation was carried out at 10 p.m. In support of this, he relies on the fact that a press release was published by Regnum News Agency at 10.44 stating that G.J. and the applicant had been abducted at the Argavand intersection at around 10 p.m. on 23 February 2008 by unknown masked persons. He also relies on a similar press release which was published by A1+ news agency at 11.19 p.m.

B. The Government's version

9. The Government contest the applicant´s version of the events and rely on the results of the domestic authorities' examination of the events (see paragraphs 93, 96 and 98 below).

10. According to an announcement made on 23 February 2008 on the Armenian Police website, operative information had been received by the PDFOC that the persons driving two cars (with indication of the licence plates) had been armed and intended to destabilise the situation in Yerevan. At around 11 p.m. the above-mentioned cars had been pulled over near Argavand intersection by PDFOC officers to conduct an inspection. During an inspection, the PDFOC officers encountered resistance from the persons in the cars as a result of which police officer R.M. had accidentally fired his service gun, inflicting minor injuries on two police officers and the applicant, who had put up resistance. The persons in those cars, namely the applicant, G.J., K.H. and L.P. had been taken to the PDFOC. A PSM-type pistol with cartridges had been found in the applicant's possession and two other pistols in the possession of G.J. and K.H. As a result of the inspection of the cars, a hunting rifle and a Browning-type pistol with cartridges had been discovered, as well as a dagger, handcuffs and a bulletproof vest.

II. THE CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. The applicant's arrest, his alleged ill-treatment by police officers and his medical assistance during the arrest

11. According to "the record of bringing a person in", the applicant was "brought in" to the PDFOC on 23 February 2008 at 11.30 p.m. by PDFOC officers S.M. and A.M. on suspicion of having shown resistance to police officers.

12. According to the applicant, in the lobby of the administrative building of the PDFOC he and G.J. had been beaten by three persons of the special task force who had thrown them to the ground and started hitting

and kicking different parts of their bodies. G.J., seeing his brother's helpless and bloodstained condition, had asked the police officers not to hit him because of the spinal disease. However, the police officers did not stop but, on the contrary, started to beat him more vigorously, aiming at the spine. The applicant alleges that both he and G.J. sustained numerous bodily injuries as a result of the violence committed by the police officers. Thereafter, from 10 p.m. on 23 February 2008 until about 12.50 a.m. on 24 February 2008 he was kept at the PDFOC. As his firearms wound was bleeding the police officers placed thick layers of paper on his chair to try to conceal the blood stains.

13. On 24 February 2008, at 12.50 a.m., the applicant was taken to hospital where it was found that he had received a perforating firearms injury to the buttocks. The wound was disinfected and dressed, after which the applicant was taken back to the PDFOC.

14. On 24 February 2008 investigator M. of the Principal Department for Investigations of the Police instituted criminal proceedings against the applicant under Article 316 § 2 (life or health-threatening assault on a public official) of the Criminal Code (case no. 69101308) on account of his alleged use of violence against the police officers.

15. On the same date, at 2 a.m., a record of the applicant's arrest was drawn up, according to which the applicant had been arrested on suspicion of using violence against a police officer.

16. At 2.15 a.m. the applicant was questioned as a suspect. He stated, *inter alia*, that two or more persons had taken him out of the car and forced him to the ground. He had then pressed his right hand to his chest since he could not lie down because of his spine disease and had been in a half-kneeling position. When he was in that position, his hand had been on his chest with his arms leaning on the ground while one of the police officers held his left hand and another demanded that he take his hand away from his chest. At that moment he had heard a shot, after which he had been seated in a car and taken to the PDFOC. In the car, a police officer had taken the applicant's gun from the right side of his waist. That gun had been an official gift to him and he had the necessary licence to carry it. The applicant further submitted that when he was being taken to the PDFOC he had felt that he had been shot in the buttocks but kept silent since it did not bother him but, once in the building, when the police officers saw that he was bleeding they had taken him to hospital where he was given first aid. The applicant denied having sworn at the police officers or threatened them. Asked whether he had hit a police officer after he had been taken out of the car, the applicant denied having shown resistance and stated that he could not possibly have hit anyone considering that he had been forced to the ground immediately after he was taken out of the car.

17. After this questioning, until 9 a.m. on 24 February 2008 the applicant was kept in one of the offices of the PDFOC. Throughout the time

he was kept in that room, his wound was bleeding and his condition was deteriorating. The police officers eventually took him to the Police Hospital on the same day.

18. At 9 a.m. on 24 February 2008 the applicant was admitted to the Police Hospital. In the hospital they took off his medical corset, which he needed in order to move. Furthermore, during the two days of his stay in the hospital, they refused to give him food and water.

19. On 26 February 2008 at 1.40 a.m. the applicant's medical condition worsened again and he was transferred to Central Prison Hospital where he was admitted to the tuberculosis department.

B. The applicant's forensic medical examinations

20. On 27 February 2008 investigator M. ordered a forensic medical examination of the applicant to clarify the circumstances in which he had received bodily injuries during the police operation.

21. On 29 February 2008 the applicant's forensic medical examination was carried out in Central Prison Hospital and various bodily injuries were discovered. In particular, the forensic medical report, issued on 21 March 2008, stated as follows:

> "The bodily injuries sustained by [the applicant], i.e. the perforating firearm-bullet injury around the left side of the buttocks, with damage to the hypodermic tissue; haemorrhage to the left of the eye socket, the anterior side of the right half of the chest, both sides of the buttocks, ... [the lower part] of the left thigh and [the upper part] of the crura; a wound from a blow around the left eyebrow; and scratches on the head and the left crus were inflicted in the following way: the penetrating firearm injury was inflicted by a shot fired from a firearm loaded with a bullet, while the other injuries were inflicted using blunt objects ..., causing medium-gravity health damage, with lasting deterioration of health ... . [The applicant] suffers from tuberculous spondylitis of the 8th and 9th thoracic vertebrae ..."

22. It appears from the report that the applicant told the doctor that he had been injured during the police operation when he had been hit in the face with a gun butt, taken out of the car, thrown to the ground and beaten.

23. On 26 March 2008 a forensic medical examination by an expert commission was ordered to establish the applicant's medical condition. According to the corresponding report, apparently issued on 7 April 2008, the following forensic medical conclusion was made:

> "[The applicant] suffers from tuberculous spondylitis of the 7th, 8th and 9th thoracic vertebrae, and of the 2nd, 3rd, and 4th lumbar vertebrae, sustained in the past and treated, and currently in acute condition. The mentioned illness is considered a grave one and requires long-term inpatient treatment under strict bed rest in a specialist clinic, and with additional care."

C. The applicant's requests to be recognised as a victim party

24. In the meantime, the investigation of case no. 69101308 (see paragraph 14 above) was transferred to the Special Investigative Service (hereafter, the SIS). On 7 March 2008 investigator H. of the SIS took over the case.

25. On 17 April 2008 the applicant filed an application seeking to be recognised as a victim party on the grounds that he had been beaten and injured by police officers during the police operation. In substantiation of his allegations the applicant referred to the results of the forensic medical examination of 29 February 2008 (see paragraph 21 above).

26. On 18 April 2008 investigator H. made a decision to postpone the examination of the application on the grounds that the investigation into the episode of R.M. injuring, *inter alia*, the applicant continued.

27. On 13 June 2008 the applicant and G.J. lodged an application seeking to be recognised as a victim party. In addition to his allegations of ill-treatment during the police operation, the applicant and G.J. submitted that they had been beaten by police officers in the lobby of the PDFOC.

28. On 16 June 2008 investigator H. referred to the decision of 18 April 2008 and the grounds stated therein for postponing the examination of the application.

29. On 4 July 2008 the applicant and G.J. complained to the General Prosecutor's Office, seeking to oblige investigator H. to examine the application of 13 June 2008 and to be recognised as a victim party.

30. On 16 July 2008 the General Prosecutor's Office informed the applicant and G.J. in a letter that their application was not based on the requirements of the Code of Criminal Procedure since they already had the status of accused persons in the criminal proceedings.

31. On 12 August 2008 the applicant and G.J. lodged a complaint with the Kentron and Nork-Marash District Court of Yerevan (hereafter, the District Court) seeking to be recognised as a victim party in the proceedings. By its decision of 26 August 2008 the District Court dismissed their complaint for the same reasons as those indicated in the letter of the General Prosecutor's Office of 16 July 2008, that is, the same person could not have the status of an accused and victim party in proceedings at the same time.

32. In the meantime, on 13 August 2008 investigator H. decided not to carry out criminal prosecution in relation to the applicant's and G.J.'s allegation of ill-treatment at the PDFOC. This decision stated that G.J. had refused to confirm his earlier statement that he and the applicant had been ill-treated at the PDFOC. Neither had L.P. and K.H. mentioned about having witnessed the applicant's and G.J.'s beatings during the investigation. At the same time, the applicant had made no allegation of his and his brother's ill-treatment during his questioning as a suspect on

24 February 2008 and had refused to answer any questions from the prosecutor after having made such an allegation before the trial court on 6 August 2008.

33. The investigator's decision also mentioned the names of twenty police officers of the PDFOC who were questioned and denied the allegation of ill-treatment.

34. On 23 August 2008 the applicant and G.J. appealed against the decision of 13 August 2008 to the General Prosecutor's Office, which dismissed their appeal on 27 August 2008.

35. The applicant and G.J. sought judicial review of the decision of 13 August 2008.

36. On 21 October 2008 the District Court dismissed their complaint. The applicant and G.J. lodged an appeal.

37. On 3 December 2008 the Criminal Court of Appeal dismissed the appeal as unsubstantiated, thus upholding the decision of the District Court. In doing so, the Court of Appeal stated that, according to the materials in the case file, a fight had taken place between the applicant and the police officers when they were disarming him at the Argavand intersection. During the fight shots were fired from the service gun of a police officer, as a result of which several persons, including the applicant, were injured. The Court of Appeal referred to the decision of 13 August 2008 (see paragraph 92 below) to institute criminal proceedings against the police officers for exceeding their authority. Since it was still necessary to continue the investigation into the circumstances in which the applicant had sustained his ballistic and non-ballistic injuries, it had been decided to conduct it together with the above-mentioned instituted criminal case.

38. On 27 December 2008 the applicant and G.J. lodged an appeal on points of law.

39. On 22 January 2009 the Court of Cassation declared their appeal inadmissible for lack of merit. In the decision it was stated, *inter alia*, that the applicant, during his arrest, had disobeyed the lawful orders of the representatives of authority and used violence, dangerous for life and limb, against them.

D. Charges against the applicant and his detention on remand

40. On 25 February 2008 the applicant was charged with using violence, dangerous for life or limb, against police officers under Article 316 § 2 of the Criminal Code. In the decision to bring the charge it was stated that, during the police operation at the Argavand intersection on 23 February 2008, the applicant had disobeyed the lawful orders of police officers to stop the car by driving into the police van. Thereafter, he had threatened the police officers with violence, attempted to take a pistol out of his pocket, put up resistance and used violence, dangerous for life and limb, against the

police officers by punching police officer R.M. in the face, inflicting a bodily injury on the latter.

41. On the same day investigator M. lodged an application with the District Court seeking to detain the applicant.

42. The applicant submitted a written note stating that, due to his poor health, he was unable to attend the court hearing on the examination of the investigator's application seeking his detention. In any case, he had a defence lawyer who would represent him in court.

43. On the same day the police officers put the damaged, blood-stained medical corset seized earlier on the applicant and, holding him by the arms, took him to the District Court for the examination of the investigator's application.

44. On the same date the District Court authorised the applicant's detention for two months starting from 24 February 2008. The applicant's request to be released on bail was rejected.

45. Upon the conclusion of the court examination, the applicant was taken to Nubarashen detention facility from where he was transferred to the Central Prison Hospital (see paragraph 19 above).

46. On 3 March 2008 the applicant lodged an appeal against his detention order claiming, *inter alia*, that he was suffering from spinal tuberculosis which, in accordance with Government Decree No. 825-N of 26 May 2006, was included in the list of grave diseases impeding the serving of punishment.

47. On 7 March 2008 the Criminal Court of Appeal dismissed the applicant's appeal. As for the applicant's state of heath, it found that a medical examination had to be carried out in order to answer those questions. Furthermore, the application of the measure of restraint was not related to serving punishment.

48. On 15 April 2008 the applicant lodged an appeal on points of law. By decision of 4 May 2008 the Court of Cassation refused to examine the appeal as having been lodged out of time.

E. Conditions of the applicant's detention in Central Prison Hospital

49. According to the applicant, the Central Prison Hospital had no appropriate facilities for the detention of persons suffering from spinal tuberculosis. In particular, for most of his detention he was kept in a patient cell which had a squat toilet with a hole in the floor. Because of the nature of his disease, including his inability to squat, having to use that type of toilet subjected him each time to indescribable pain and humiliation. He had to overcome acute pain in order to meet his basic needs of hygiene, such as body care and cleanliness.

50. The Government submitted that in the Central Prison Hospital the applicant was kept in a special ward for detainees suffering from tuberculosis and not in a cell, as he alleged.

F. The applicant's trial

1. The applicant's detention during trial and change of his preventive measure

51. On 19 April 2008 the investigation of the applicant's case was concluded and on 23 April 2008 the General Prosecutor sent the applicant's case to the Yerevan Criminal Court for trial. A copy of the General Prosecutor's letter of 23 April 2008 was also sent to the Head of the Central Prison Hospital to inform that, as from 23 April 2008, the applicant's detention term was calculated by Yerevan Criminal Court.

52. On 25 April 2008 judge M. of the Yerevan Criminal Court took over the case.

53. On the same day the applicant lodged a request with the Head of the Central Prison Hospital seeking to be released on the grounds that his detention as ordered by the District Court on 25 February 2008 had expired on 24 April 2008.

54. On 28 April 2008 the Head of the Central Prison Hospital informed the applicant that, starting from 23 April 2008, the applicant's detention term was calculated by Yerevan Criminal Court.

55. On 5 May 2008 the applicant lodged a request, similar to that of 25 April 2008, with the Yerevan Criminal Court.

56. On 8 May 2008 the Yerevan Criminal Court decided to set the applicant's case down for trial, assigning 19 May 2008 as the date of the first court hearing of the case. By the same decision it dismissed the applicant's request to be released, finding that the applicant's detention had been ordered by a court decision in due process, while no maximum term for the applicant's detention during trial was prescribed. It also held that the applicant's detention, as a measure of restraint, had been chosen correctly and was not to be modified or cancelled.

57. On 19 May 2008, during the first court hearing of the case, the applicant, who had two defence lawyers, lodged another application to be released. The trial court then decided to postpone its examination of the latter application until the circumstances essential for its determination had been established.

58. At the hearing of 3 June 2008 the applicant again lodged an application for release and submitted that his continued detention was causing him physical suffering and therefore contained punitive elements which amounted to torture. In this respect, the applicant referred to the expert commission report of 7 April 2008 (see paragraph 23 above) which indicated that he was in need of long-term inpatient treatment in a

specialised clinic under strict bed rest, and additional care. The trial court decided not to examine the applications.

59. In response to judge M.'s enquiry, by letter of 13 June 2008 the Head of the Central Prison Hospital informed him that the applicant, diagnosed with relapsed tuberculous spondylitis, had been kept in the tuberculosis department of the institution, where he was receiving appropriate treatment, and that no additional care could be provided to him in the prison institution.

60. At the hearing of 16 June 2008 judge M. decided to modify the applicant's measure of restraint from detention to an obligation not to leave the country on the grounds that there were no adequate facilities to ensure the applicant's treatment while in detention. In particular, the trial court referred to the applicant's serious illness and the need for additional care which, as confirmed in the letter of 13 June 2008, could not be ensured at Central Prison Hospital.

61. The applicant was released on 16 June 2008.

2. The conditions of the applicant's transport and his participation in the court hearings

62. While in detention, the applicant was transported to the trial court in a standard-issue police car where detainees would sit in a closed cell measuring 1 sq. m., on a wooden bench.

63. After being released from detention on 16 June 2008, and up until 9 September 2008, the applicant appeared at all the court hearings. During that period he was receiving regular treatment in hospital and at home and doctors advised him to stay in bed. In order to attend the court hearings the applicant had to walk with crutches.

64. On 9 September 2008 the applicant's health deteriorated and he was admitted to hospital.

65. On 22 September 2008 the Yerevan Criminal Court decided, upon an application lodged by the applicant's lawyers, to suspend the applicant's trial on the grounds that he had been admitted to hospital and was in need of long-term treatment. In this respect, the trial court referred to the findings of the report of the expert commission dated 7 April 2008 (see paragraph 23 above) as well as a letter from the hospital certifying the admission of the applicant who was in need of long-term bed rest care under medical supervision, and his inability to move actively, including to attend the hearings.

66. On 2 October 2008 the Yerevan Criminal Court decided to resume the trial on the grounds that on 1 October 2008 it had received a letter from the hospital informing it that on 30 September 2008 the applicant had been discharged from hospital with some improvement.

67. Thereafter the trial court regularly scheduled court hearings. The applicant did not attend these hearings. According to him, doing so would

have caused his condition to deteriorate. On 9 October 2008 he was forced to attend a court hearing, because in the case of his non-appearance, the trial court would have decided to detain him on remand again. However, just as he reached the court house his pain worsened and he could be taken home only after an ambulance had been called and he had been given an injection to relieve his pain.

68. Following his discharge from hospital, the applicant received outpatient medical treatment at one of the polyclinics in Yerevan whose doctors visited him regularly.

69. On 20 October 2008 the Yerevan Criminal Court sent an enquiry to the administration of the above polyclinic seeking to establish the applicant's state of health with a view to his further participation in court hearings. On 28 October 2008 the chief of the polyclinic, in reply to the above enquiry, stated that the applicant was considered as second-degree disabled and was under medical supervision by the polyclinic's doctors. A medical panel held on 27 October 2008 had found that the applicant was suffering from Bekhterev's disease, namely ankylosing spondylitis, at a progressive stage accompanied with vertebral nerve-root pain syndrome. In addition, the applicant was suffering from tuberculosis of the 8th and 9th thoracic vertebrae and the lower part of the left lung, accompanied with breathing deficiency and secondary myocardiodystrophy. Bed rest was prescribed and appropriate treatment was assigned. It was also stated that the issue of the applicant's further attendance and participation in court hearings fell outside the competence of the polyclinic.

70. In the period from October until December 2008 the applicant's lawyers submitted several applications seeking to suspend the trial due to the applicant's state of health, all of which were dismissed by the trial court.

71. On 1 December 2008 the trial court took a decision to compel the applicant to appear on the grounds that he had failed to attend the hearings of 20 and 30 October, 14 November and that of the same date. Starting from that date, before the beginning of each court hearing, the police appeared at the applicant's home in order to take him to court. However, a nurse from the polyclinic who was taking care of the applicant at his home refused to allow the applicant to be taken to the trial because of his state of health.

72. On 11 February 2009 the applicant's lawyers submitted to the Yerevan Criminal Court a letter from a clinic in Germany according to which the applicant could be treated in that clinic once corresponding medical examinations had been carried out. Based on that letter, the lawyers requested the court to cancel the applicant's measure of restraint, namely the obligation not to leave (see paragraph 60 above), and to permit him to travel to Germany for the relevant examinations to be carried out.

73. The trial court refused to examine the request on the grounds that it could not do so in the applicant's absence.

74. On 27 February 2009, before a court hearing assigned on that day, police officers visited the applicant's home and compelled him to attend the trial court. Because the police officers had not ensured his transfer in a special vehicle designed for patients, he was transferred in an armchair provided by his relatives. However, the court hearing did not take place on that date because of the prosecutor's failure to appear and the applicant had to return home.

75. On 1 March 2009 the applicant's case, following amendments to the Code of Criminal Procedure, was sent to the District Court (M. continuing as presiding judge) for further examination.

76. On 17 March 2009 the applicant's lawyers requested that the obligation not to leave be lifted, so that he could receive treatment abroad. In the case that the trial court insisted on examining such application in the applicant's presence, the lawyers requested adjournment of the hearing, submitting that the applicant was ready to endure severe pain and to appear before the court so that the question of his treatment could finally be solved. The trial court, without examining the first two requests, adjourned the hearing until the applicant was transferred to the court. On the same day his relatives took him, with much difficulty, to the court. However, as the trial started, the court refused to examine the application and proceeded to hear the prosecutor's final pleadings. The lawyers then lodged an application seeking the trial court's authorisation for the applicant's departure abroad, without cancelling his measure of restraint, for the purpose of his undergoing medical examinations there. However, the trial court refused to examine that application too.

77. On 27 March 2009 the applicant's lawyers, because of his serious health problems and spinal pain, were forced to make the final pleadings. Moreover, in order to take less time, the lawyers decided not to make the final pleadings orally but to submit them in writing. Together with the pleadings, his lawyers requested cancellation of the measure of restraint so that the applicant could go abroad for treatment. Because of the pains in his back the applicant renounced his right to make a final speech before the conclusion of the trial.

78. In its judgment of 31 March 2009 (see paragraph 87 below) the District Court ordered the applicant's measure of restraint, namely his obligation not to leave, to remain unchanged until his conviction became final.

79. In his appeal against his conviction the applicant requested the Court of Appeal to cancel his measure of restraint so that he could go abroad for treatment.

80. On 11 May 2009 the Court of Appeal decided to admit the applicant's appeal and to set the case down for examination. By the same decision, the Court of Appeal cancelled the applicant's measure of restraint on the grounds that it prevented him from receiving medical treatment. In

doing so, the Court of Appeal referred to the conclusions of the report of 7 April 2008 and the letter of the clinic in Germany proposing treatment (see paragraphs 23 and 72 above).

3. The examination of evidence and the applicant's conviction

81. During the trial before the District Court, a number of police officers who had participated in the police operation were questioned as witnesses while R.M. testified as a victim party.

82. In particular, R.M. stated that during the police operation the applicant had disobeyed his order to get out of the car and remained in the driver's seat. After being taken by force from the car, the applicant had hit him in the face, and pulled and torn the pocket of his uniform jacket which he wore over his black clothes. During the fight he noticed that the applicant had moved his right arm under his jacket, towards an object resembling a pistol handle. Taking that movement for the applicant's attempt to take out his pistol he, together with police officers A.A. and T.K., had forced the applicant to the ground and twisted his arms backwards. Almost at the same time, he had accidentally fired two shots from his service gun, injuring the applicant as well as police officers T.K. and G.M. Having neutralised the applicant, he found a pistol on him, which he then handed to his colleague, and took the applicant to the PDFOC.

83. A number of police officers including A.A., T.K., A.M. and G.M. also appeared before the trial court and gave testimony similar to that of R.M.

84. K.H., L.P., A.S. and S.H., who were in the second car accompanying the applicant when the police operation was conducted, also testified before the trial court. None of them stated that they had seen the applicant hitting a police officer. A.S. stated that he had witnessed a police officer hitting the applicant on the head with a gun butt, pulling him out of the car and throwing him to the ground. The others stated that they had seen the applicant either being forced to lie, or already lying, on the ground.

85. Upon the applicant's request, G.J. was also summoned to the court and questioned. He testified, *inter alia*, that in reality not only two but a number of shots had been fired during the incident.

86. The trial court also examined the results of R.M.'s forensic medical examination certifying his bodily injuries, namely a bruise and scratches on his face which had not caused minor damage to his health. It also examined the results of the forensic examination of R.M.'s uniform jacket certifying damage to the pocket caused by pulling the fabric.

87. On 31 March 2009 the District Court delivered its judgment finding the applicant guilty under Article 316 § 1 of the CC of using violence, not dangerous for life and limb, against police officer R.M., and sentencing him to a suspended term of three years' imprisonment. In particular, the District Court found that it had not been substantiated that the applicant had used

violence dangerous for life and limb against a public official as argued by the prosecution. In convicting the applicant, the District Court found it established that on 23 February 2008, following receipt of operative information about armed persons travelling from Ejmiatsin to Yerevan, an operation was carried out by police officers of the special task force of the PDFOC at 11 p.m. on the same day. During the operation the victim party, police officer R.M., jumped out of the police van and shouted "Police. Don't move!". The applicant disobeyed the lawful orders to get out of the car and to hand over his gun, hit police officer R.M. in the face once, pulled the latter's jacket and tore it. By applying physical force, R.M. and police officers A.A. and T.K. managed to neutralise the applicant, who was found to have a pistol under his jacket. During a fight that took place when neutralising the applicant, two shots were fired from R.M.'s service gun inflicting injuries on the applicant and police officers T.K. and G.M.

88. On 29 April 2009 the applicant lodged an appeal arguing, *inter alia*, that the District Court had failed to properly address the evidence, ignored his submissions, dismissed his applications and based its findings solely on the testimony of police officers.

89. On 15 July 2009 the Court of Appeal upheld the District Court's judgment in full and dismissed the applicant's appeal.

90. On 14 August 2009 the applicant lodged an appeal on points of law.

91. On 10 September 2009 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

III. THE INVESTIGATION INTO THE POLICE OPERATION OF 23 FEBRUARY 2008

92. On 13 August 2008 investigator H. made a decision to institute criminal proceedings under Article 309 § 1 (exceeding authority) of the Criminal Code (case no. 62215508) on account of the police officers having allegedly kept L.P. and K.H. in police custody unlawfully following the police operation of 23 February 2008. Considering that a number of important circumstances had to be clarified for the purposes of the legal qualification of the actions of the police officers during the operation of 23 February 2008, it was necessary to continue the investigation in so far as the use of firearms by the police officer was concerned. It was therefore decided to continue the investigation of the latter episode within the framework of case no. 62215508.

93. On 30 June 2009 investigator H. decided to terminate the criminal proceedings in relation to case no. 62215508 and not to prosecute the police officers involved in the police operation. The relevant parts of the decision in so far as the police operation was concerned read as follows:

> "As regards the ballistic injuries which [the applicant], [T.K.] and [G.M.] received as a result of shots fired from [R.M.'s] service gun, as well as the corporal injuries

sustained by [the applicant] during the [police operation] ..., the following has been established:

... [the applicant], having disobeyed ... R.M.'s order [not to move], had driven the car forward in their direction and had been obliged to stop only after having collided with the police ... car. Thereafter, continuing his unlawful activity and disobeying the lawful orders of the police officers to step out of the car and surrender his gun, [the applicant] had sworn and threatened the police officers with retaliation, pulled and damaged [R.M.'s] uniform, punched the latter in the face inflicting injuries which did not qualify as minor damage to health.

By use of physical force [R.M.], [A.A] and [T.K.] had neutralised [the applicant] preventing his attempt to pull out the gun kept at his waist under the jacket ...

During the scuffle and struggle when neutralising [the applicant] two accidental shots were fired from ... [R.M.'s] service gun which ... injured [the applicant] ..., [T.K.] ... and [G.M.] ...

[R.M.] had stated in relation to those events that ... there was no necessity to use firearms when neutralising [the applicant]. The shots had been fired accidentally. The safety lever had opened chambering a round ... During the entire time the gun had been in his right hand with the barrel directed down and, when they managed to kneel [the applicant] down and tried to tie his hands behind his back, a shot was fired from his gun. At the same moment, parallel to the shot, [the applicant] fell down while he himself, not being able to keep his balance, also fell and then the second shot was fired. At that point he had the gun in his right hand which was pointed at the direction of [the applicant's car] while he and [the applicant] were almost on the ground.

...

[R.M.] had also stated that ... before getting out of the [police van] ... he had pulled out his gun and switched the safety catch on ... that is when neutralising [the applicant] ... the weapons were unholstered ... There was no necessity to use firearms when neutralising [the applicant] ... The safety catch had gone off ... [that] could have happened because of rubbing against the body or clothes ...

In relation to [the applicant's] non-ballistic injuries, [R.M.] had stated that ... during the scuffle because of [the applicant] showing resistance ... [the applicant] had fallen with his face on the ground while he himself had fallen on [the applicant] and probably [the applicant] had sustained his corporal injuries because of the force used to neutralise him and as a result of the fall ...

Thus, it has been established during the investigation that ... [R.M.] had made his gun ready in accordance with the requirements of Section 33 of the [Police Act] ... when neutralising [the applicant] he had not used or wanted to use firearms ... and in the given situation he could not have expected that because of the struggle with [the applicant] the lever of the gun could open, firing shots by accident and injuring three persons ...

As concerns the infliction of bodily injuries to [the applicant], physical force had been used in his respect in compliance with the requirements of Sections 29 and 30 of the [Police Act] while the damage had been caused when neutralising him during prevention of violence and resistance towards the police officers. That is, the officers of [PDFOC] acted lawfully ..."

The decision then stated that A.A., T.K. and other police officers who had participated in the police operation had made similar statements to those of R.M. It then referred to the statements of their superior, who had affirmed that, considering R.M.'s level of training and long work experience, the shots had been the result of the resistance shown and not of negligence or breach of rules on handling weapons.

The decision also referred to the report of a ballistic expert dated 15 April 2008 which had concluded, *inter alia*, that it would not have been possible to fire R.M.'s service gun with the safety catch on. At the same time, the decision included the ballistic expert's statement, apparently taken after the delivery of the report, that it was possible that in the situation of the struggle as described the safety catch could go off because it had been touched or as a result of other interaction when in R.M.'s hand.

94. The applicant appealed against the above decision as being in breach of his rights to the supervising prosecutor who rejected his complaint on 22 July 2009.

95. The applicant then sought judicial review of the decision of 30 June 2009 requesting at the same time to be recognised as a victim party.

96. On 15 September 2009 the District Court upheld the decision of 30 June 2009 on the grounds that it had been established that the applicant had not obeyed the order to step out of the car and surrender his gun, after which he had threatened the police officers, punched R.M. in the face and pulled and damaged the latter's uniform. It was further established that the shots from R.M.'s gun had been fired accidentally while the applicant had sustained his injuries as a result of his falling down during the scuffle with the police officers. In this respect the District Court referred to the explanations provided by investigator H. and the prosecutor.

97. The applicant lodged an appeal. He requested, *inter alia*, to be recognised as a victim party in the proceedings and to assign the investigation of the case to a different investigator.

98. On 20 November 2009 the Court of Appeal upheld the District Court's decision in full. The relevant parts of its decision read as follows:

> "... during the scuffle ... when neutralising [the applicant] two shots had been fired by accident from [R.M.'s] service gun injuring [the applicant], [T.K.] and G.M.] ...
>
> After having neutralised [the applicant], a gun was found with him.
>
> ...According to Section 33 of the [Police Act] ... an armed police officer is entitled to draw his firearm and to make it ready for use if he considers that a given situation may necessitate its use, as envisaged by section 32 [use of firearms in order to repel an assault posing danger to the life or limb of a police officer] ...
>
> Any attempt by a person who is being apprehended by an armed police officer to approach the latter (by breaching the required distance), to perform a sharp, unexpected movement without permission, to put his hands in his pockets or reach for a weapon allow the police officer to use firearms without a warning ...

> In this sense the [Court of Appeal] finds that [R.M.'s] actions had been in accordance with Sections 32 and 33 of the [Police Act].
>
> Having examined the arguments with regard to [the applicant's] non-ballistic injuries ... the [Court of Appeal] finds it credible that [the applicant] sustained those when [R.M.], [A.A.] and [T.K.] tried to neutralise him to prevent his resistance and kneel him down during which [the applicant] resisted and was struggling, at which point he fell with his face on the ground.
>
> ..."

99. The applicant lodged an appeal on points of law. He argued, in particular, that the investigating authority had failed to establish the mechanism whereby the two shots had been fired accidentally, as it alleged. Furthermore, in the circumstances where the Court of Appeal had upheld the investigating authority's conclusion that the shots had been the result of an accident, it had nevertheless referred to the provisions of the Police Act concerning the deliberate use of force in its decision. In those circumstances, it remained unclear whether the Court of Appeal had considered the shots in question to have been the result of proportionate use of force or of an accident, as alleged by the investigating authority. The applicant lastly argued that, considering the nature of his bodily injuries, he could not possibly have sustained them in the circumstances described in the investigator's decision of 30 June 2009.

100. By its decision of 15 January 2010 the Court of Cassation declared the appeal on points of law inadmissible for lack of merit.

IV. OTHER DEVELOPMENTS

101. In September 2008 the applicant qualified for second-degree disability.

102. On 23 March 2009 the District Court delivered its judgment in respect of G.J., finding him guilty of using violence against police officers of the PDFOC following his arrest. In the judgment, in the part concerning the facts as established by the court, it was stated that during the police operation the applicant had used violence, dangerous for life and limb, against the police officers who took part in the police operation.

103. According to the applicant, following the cancellation of the measure of restraint by the Court of Appeal, he left for Germany and was successfully treated.

RELEVANT LEGAL FRAMEWORK

104. For a summary of the relevant domestic law provisions, as well as of the relevant domestic and international materials relating to the February 2008 presidential election and the post-electoral events, see

Mushegh Saghatelyan v. Armenia, no. 23086/08, §§ 91-134, 20 September 2018.

105. For a summary of the relevant provisions of the Police Act, see *Ayvazyan v. Armenia*, no. 56717/08, §§ 55-59, 1 June 2017.

106. Article 309 § 1 of the Criminal Code, which is not quoted in the above judgments, provides that deliberate actions committed by an official which obviously fall outside the scope of his authority and cause significant damage to the rights and lawful interests of individuals or organisations, or the lawful interests of society or the State, are punishable by a fine from three hundred to five hundred times the minimum salary, or forfeiture of the right to hold certain posts or to carry out certain activities for a period not exceeding five years, or two to three months' detention, or imprisonment up to four years.

107. Section 29 of the Police Act, in addition to the provisions cited in the above-mentioned case of *Ayvazyan*, provides that police officers must undergo special training in the framework of which they acquire skills of negotiation and persuasion for the purpose of limiting the use of physical force, special tools and firearms. They must also be subjected to periodic tests assessing their ability to act in a situation necessitating the use of physical force, special tools and firearms. After the completion of the relevant training a police officer has the right to carry a firearm.

THE LAW

I. JOINDER OF THE APPLICATIONS

108. Having regard to the similar subject matter of the applications, the Court decides to examine them jointly pursuant to Rule 42 §1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

109. The applicant complained under Article 3 of the Convention that the police had used unjustified force in the course of the police operation carried out on 23 February 2008.

110. The applicant also complained under Article 3 of the Convention that the authorities had failed to conduct an effective investigation into the use of such force, and under Article 13 of the Convention that he had not had an effective domestic remedy in respect of those breaches of Article 3 in his case.

111. The applicant further complained under Article 3 of the Convention that no timely and proper medical assistance was provided to him when under arrest; that no adequate treatment and care was provided to him while in detention and that the conditions for his detention were inadequate; that

he was forced to participate in the trial despite his poor health and that, while in detention, he was transported to the court in a prison van not suitable for carrying detainees with health problems.

112. The Court, as master of the characterisation to be given in law to the facts of the case (see, among many other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that, in the light of its case-law (see, for instance, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 123, ECHR 2005-VII), it is appropriate to examine the applicant's complaints solely under Article 3 of the Convention.

113. Article 3 of the Convention provides as follows:

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

A. Alleged use of unnecessary force against the applicant during the police operation and alleged failure to conduct an effective investigation therein

1. Admissibility

114. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

115. The applicant submitted that due to his serious problems with mobility, he was simply unable to show resistance to the police officers let alone use physical force against them. As for his gunshot injury, the applicant submitted that, even assuming that it had indeed been an accident, the State bore responsibility for the actions of those whom it had authorised to use lethal weapons.

He further submitted that no separate proceedings were instituted to examine his complaints of ill-treatment. That is, the investigation in respect of his treatment during the police operation was conducted within the criminal proceedings against him, both of which were conducted by the SIS with investigator H. being in charge of both of them. As a result, he never obtained the status of a victim party in the proceedings.

116. The Government submitted that the applicant had disobeyed the police officers' orders and had shown resistance. He had hit R.M. in the face, pulled his jacket and torn it. During the police operation the police officers had found that the applicant posed a threat because he could have used his gun. As was described in the record of R.M.'s interrogation, he had inferred from the applicant's holding his right hand tight to his chest that he

was going to take out a gun from the pocket of his jacket. The applicant himself had confirmed in his statement of 24 February 2008 that he had pressed his right hand on his chest when he was taken out of the car and forced to the ground by police officers. The Government maintained that the intention of the police was to disarm the applicant while the shots fired from R.M.'s service gun were the result of an accident.

(b) The Court's assessment

(i) The alleged inadequacy of the investigation

117. The general principles with respect to the procedural obligation of the High Contracting Parties under Article 3 of the Convention to investigate acts of ill-treatment by State agents were set out in detail in paragraphs 115-23 of the Court's judgment in *Bouyid v. Belgium* ([GC], no. 23380/09, ECHR 2015).

118. The applicant's complaint, as set out in his requests seeking to be recognised as a victim party in the proceedings, that he had been subjected to treatment contrary to Article 3 of the Convention in the course of the police operation (see paragraphs 25 and 27 above) was arguable. It was supported by relevant medical evidence, which showed a perforating firearms injury and extensive bruising on his face and body (see paragraph 21 above). The authorities were therefore required to carry out an effective investigation into the applicant's alleged ill-treatment.

119. The Court observes at the outset that no separate investigation was ever initiated in relation to the applicant's injuries sustained during the police operation of 23 February 2008. Thus, the investigation into those events was initially carried out within the framework of the criminal proceedings brought against the applicant on account of the use of violence against police officers (see paragraph 14 above). Thereafter, almost six months after the events at issue, it was decided that the circumstances in which the applicant and the two police officers had sustained gunshot injuries were to be examined within the framework of a separate set of proceedings instituted on 13 August 2008 against police officers on account of the alleged unlawful arrest of the persons who were accompanying the applicant and G.J. in the other car (see paragraph 92 above).

120. The Court further observes that, despite several requests in that respect, the applicant was never recognised as a victim party in the proceedings, which would have allowed him to exercise his procedural rights such as filing requests, making objections and so on (see paragraphs 26, 28 and 29 above). Furthermore, not only was the applicant not granted formal status in the investigation but he was never separately questioned with regard to his allegations. Indeed, the decision of 30 June 2009, according to which the PDFOC officers involved in the police operation were not to be prosecuted, did not even set out the applicant's

account of the events but solely referred to the statements of those officers, including R.M., as well as the statements of their superior (see paragraph 93 above).

121. Moreover, the prosecution and the courts carried out no analysis of the manner in which the operation had been planned or conducted so as to determine whether all reasonable steps had been taken to minimise or prevent the applicant's injuries. The courts readily accepted the prosecution's version, not supported by any material evidence such as, for instance, a reconstruction of the events or relevant forensic data, that R.M.'s service gun had fired accidentally during the struggle when neutralising the applicant and that his bodily injuries had been the result of his fall (see paragraphs 96 and 98). Most importantly, there was no specific analysis of the degree of force used during the police operation. That is, considering the gravity of the damage to the applicant's health as compared to that suffered by R.M. who, as opposed to the applicant, had been recognised as a victim party in the proceedings (see paragraph 81 above), the authorities did not verify whether the force used against the applicant had been necessary in the circumstances.

122. In addition, the Court cannot overlook the fact that, as noted above, the investigation into the alleged use of excessive force in respect of the applicant was being conducted by the same investigators who had pressed charges against him for using violence against R.M. This fact casts serious doubt on the credibility of the findings of the investigation, considering the fact that opposite interests were involved.

123. In view of these deficiencies of the investigation, the Court concludes that there has been a breach of Article 3 of the Convention under its procedural head.

(ii) The alleged ill-treatment of the applicant in the course of the police operation

124. The general principles with respect to the obligation of the High Contracting Parties under Article 3 of the Convention not to submit persons under their jurisdiction to inhuman or degrading treatment or torture in the course of encounters with the police have likewise been set out in detail in paragraphs 81-90 of the Court's judgment in *Bouyid* (cited above).

125. It is not in dispute between the parties that, during the police operation of 23 February 2008, the applicant sustained a firearms injury and a number of non-ballistic injuries including, among others, wounds on his face and body (see paragraph 21 above). The Court considers that these injuries are sufficiently serious to fall within the scope of Article 3 (see *Necdet Bulut v. Turkey*, no. 77092/01, § 24, 20 November 2007).

126. At the same time, differing versions of how the applicant had actually sustained those injuries were put forward by the parties.

127. The applicant claimed that, after striking the window on his side of the car, the police officers had forcefully taken him out of the car, hit him in

the face with a gun butt and pushed him to his knees on the ground, disregarding his brother's warnings that he had a spinal disease. Thereafter he was injured by gunfire opened by the police officers carrying out the operation (see paragraph 7 above). According to the Government's submission, the applicant had shown resistance when the police officers tried to disarm him, during which he sustained several injuries while his firearms injury had been accidental (see paragraph 116 above).

128. In so far as the applicant's ballistic injury is concerned, the Court observes that he was shot once with officer R.M.'s service gun as a result of which he sustained a perforating bullet injury to the buttocks. Officers T.K. and G.M., who were participating in the applicant's apprehension, were also injured by gunfire. The ensuing investigation concluded that during the struggle to neutralise the applicant, two shots had been fired from officer R.M.'s service gun accidentally injuring the applicant and the two police officers (see paragraph 93 above). Although the applicant had disputed those conclusions at the domestic level, in his observations submitted to the Court after communication of the applications he did not challenge them. Furthermore, the applicant also did not claim that R.M. had shot him deliberately or that the shot had been the result of excessive use of force (see paragraph 115 above). In these circumstances, and notwithstanding its above findings with regard to the inadequacy of the investigation into the events in question, the Court sees no reason to call into question the conclusion that the applicant's gunshot injury had been an accident.

129. Having said that, the Court observes that, as already noted above, the investigation by the domestic authorities failed to address the issues relating to the planning and conduct of the police operation (see paragraph 121 above). As a result, the investigation failed to clarify a number of important questions in relation to the shooting incident, including the level of officer R.M.'s training, whether his actions had complied with the instructions given prior to the operation and whether such instructions had been given at all.

130. In so far as the applicant's non-ballistic injuries are concerned, the Court observes that, as established by the forensic medical expert, the applicant had suffered medium gravity health damage, with lasting deterioration of health (see paragraph 21 above) whereas R.M.'s bodily injuries had not been found to have caused even minor damage to the latter's health (see paragraph 86 above). The Court further observes that there were at least three police officers involved in neutralising the applicant alone. As already noted, only one of them, namely R.M., was slightly injured. Against this background, given the serious nature of the applicant's injuries, especially compared to those sustained by R.M., the burden rests on the Government to demonstrate that the use of force was not excessive (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII).

131. The Court observes that the main argument put forward by the Government was that the applicant had resisted arrest, in particular by hitting R.M. in the face, pulling the latter's jacket and tearing it. The Government also stated that the applicant had made a movement by which the police officers had assumed that he was trying to reach for his gun (see paragraph 116 above). However, although the decision of 30 June 2009 refers to the episode of what appeared to have been the applicant pulling out the gun kept under his jacket (see paragraph 93 above), the facts established by the District Court, in its judgment of 31 March 2009 as well as its decision of 15 September 2009, did not confirm that the applicant had tried to reach for his gun (see paragraphs 87 and 96 above). Furthermore, the Court cannot overlook the fact that the police officers had apparently disregarded G.J.'s warnings about the applicant's spinal disease, a fact not commented on by the Government, when forcing him to the ground in a kneeling position, which had undoubtedly caused pain to the applicant (see paragraph 7 above).

132. Having regard to the applicant's consistent and detailed explanations about the origin of his injuries which were supported by medical evidence and witness statements (see paragraphs 21 and 84 above), as well as to its earlier finding with regard to the lack of an effective investigation into the applicant's allegations (see paragraph 121 above), the Court considers that the applicant has made out a *prima facie* case that his injuries were inflicted as a result of excessive and unjustified force used during the police operation of 23 February 2008 while the Government have failed to provide convincing explanations to the contrary.

133. Accordingly, the Court concludes that the State is responsible, under Article 3 of the Convention, for the injuries, both ballistic and non-ballistic, sustained by the applicant on that date. It follows that there has been a violation of Article 3 of the Convention.

B. Alleged lack of timely and proper medical assistance when under arrest and in detention; alleged lack of adequate conditions for detention and transfer and the applicant's participation in the trial despite his poor health

1. Admissibility

134. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

2. Merits

(a) The parties' submissions

135. The applicant submitted that during the first hours of his questioning on 23 February 2008 his firearms wound had been bleeding but he had only been taken to hospital after midnight. Furthermore, having received first aid, he had not been allowed to stay in hospital but instead had been taken back to the police department. As a result, his condition deteriorated in the morning when his admission to hospital once again became necessary. Even then, he had not been taken to a civilian hospital but sent to the Police Hospital where he had not been given food or water. Thereafter, despite the fact that he needed medical treatment, he had been admitted to a detention facility, and only when his medical condition once again deteriorated, he was eventually transferred to the Central Prison Hospital the next day. However, the Central Prison Hospital lacked relevant medical personnel specialising in the treatment of spinal tuberculosis and Bekhterev's disease (ankylosing spondylitis). Moreover, no assistance had been available to him for meeting his daily needs.

The applicant further submitted that he was transported from the detention facility to the courthouse in a standard-issue police vehicle in a small prisoner cell measuring 1 sq. m. and had to sit on a wooden bench. Each time he was transferred to a court hearing, a journey of around 10 km., he experienced severe pain in the spine both during the journey and over the following days. Lastly, the trial court disregarded his medical condition by forcing him to appear at the hearings. In a situation where doctors had indicated bed rest for him, he was obliged to attend the court hearings. During the hearings he often had to lean on crutches to alleviate acute pain in the spine.

136. The Government submitted that the authorities were not aware of the applicant's ballistic injury as he had not told the police officers about it. Once the police officers noticed that the applicant was bleeding they had taken him to hospital immediately, that is at around 12.50 a.m. on 24 February 2008. In the Government's submission, the location of the applicant's wound in the buttocks was such that the police officers could have overlooked it as the applicant was being questioned in a seated position and had not told them about it. Having received the necessary medical care, the applicant had been taken back to the police department from where he was transferred to the Police Hospital at around 9 a.m. on the same day after his condition deteriorated. On 26 February 2008 the applicant was transferred to the tuberculosis department of the Central Prison Hospital where he received adequate conservative treatment by a pulmonologist. Furthermore, on 16 June 2008, that is only three days after the receipt of the letter from the Head of the Central Prison Hospital

confirming the unavailability of additional care for the applicant, the trial court released the applicant from detention.

Furthermore, the Government submitted that the trial court had adjourned the hearings a number of times in view of the applicant's state of health, had changed his detention to an obligation not to leave and had eventually cancelled the applied measure of restraint altogether.

(b) The Court's assessment

(i) General principles

137. The relevant principles with respect to medical care to be provided to persons deprived of their liberty have been summarised in paragraphs 135-37 of the Court's judgment in *Blokhin v. Russia* ([GC], no. 47152/06, 23 March 2016).

138. As regards cases concerning detainees with disabilities, the Court has considered that where the authorities decide to place and keep a disabled person in detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from his disability (see, for example, *Z.H. v. Hungary*, no. 28973/11, § 29, 8 November 2012, and *Jasinskis v. Latvia*, no. 45744/08, § 95, 21 December 2010).

139. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

140. Furthermore, allegations of ill-treatment must be supported by appropriate evidence. An unsubstantiated allegation that medical care has been non-existent, delayed or otherwise unsatisfactory is normally insufficient to disclose an issue under Article 3 of the Convention. A credible complaint should normally include, among other things, sufficient reference to the medical condition in question; medical treatment that was sought, provided, or refused; and some evidence – such as expert reports – which is capable of disclosing serious failings in the applicant's medical care (see *Krivolapov v. Ukraine*, no. 5406/07, § 76, 2 October 2018, with further references).

141. The Court has established a long line of case-law concerned with the conditions in which applicants were transferred in prison vans between remand centres and courthouses (for the relevant principles concerning transport of prisoners see, in particular, *Tomov and Others v. Russia*, nos. 18255/10 and 5 others, §§ 123-28, 9 April 2019). As regards specifically the transportation of prisoners with health issues, the Court has found that their transfer in standard prison vans might give rise to an issue under Article 3 (see, for example, *Tarariyeva v. Russia*, no. 4353/03,

§§ 112-17, ECHR 2006-XV (extracts) where a post-operative patient had been transported on a stretcher in a non-adapted prison van).

(ii) Application of those principles to the present case

(1) Medical treatment

142. The applicant complains that he was not provided with timely and proper medical assistance for his ballistic injury received during the police operation and that he was subsequently deprived of adequate medical treatment as required by his state of health while in detention.

143. The Court notes at the outset that after shots were fired during the police operation, one of which injured the applicant, he was taken directly to the PDFOC by the police officers. While the parties disagree as to the exact time of the police operation during which the applicant was injured – around 10 p.m. according to the applicant and around 11 p.m. according to the Government (see paragraphs 7 and 10 above) - it is common ground between the parties that it was after midnight, 12.50. a.m., when the applicant was taken to hospital to be given first aid (see paragraph 13 above).

144. The Government claimed, referring to the applicant's statement made as a suspect, that the police officers had not been aware of the applicant's injury as the latter had kept silent about it. According to the Government, police officers had taken the applicant to hospital immediately after they noticed that he was bleeding. According to the applicant, in reality he had been bleeding throughout his initial questioning and the police officers had had to put layers of paper on his chair (see paragraph 12 above).

145. While it is true that the applicant submitted in his statement that he had not told the police officers about his firearm injury (see paragraph 16 above), it is also true that he had sustained a number of other injuries during the police operation including to his face, as later confirmed by the forensic expert (see paragraph 21 above). The Court finds it striking that in those circumstances the police officers did not take the applicant to hospital or call an ambulance to give first aid, but instead took him directly to the PDFOC in a police car, for questioning (see paragraph 7 above).

146. The Court observes that the applicant's above-mentioned statement was taken from him at 2.15 a.m., immediately after he had been brought back to the PDFOC from hospital. It is difficult to conceive how a person who had been injured in the buttocks only a few hours before could have remained in a seated position for about an hour and a half without complaining of pain, and how the police officers questioning him could fail to notice his wound bleeding. In any event, even assuming that the police officers could have been unaware of the applicant's ballistic injury before 12.50 a.m. when he was eventually taken to hospital, the Court notes that

after the applicant was given first aid, he was not admitted to hospital to remain under medical supervision but was instead taken back to the PDFOC for interrogation (see paragraph 13 above). As a consequence, in circumstances where the freshly-injured applicant, who was already suffering from a serious spinal disease, was taken back from the hospital for questioning in the middle of the night, he would have found himself in a quite stressful and vulnerable situation (see, *mutatis mutandis, Korban v. Ukraine*, no. 26744/16, § 124, 4 July 2019).

147. According to the applicant's account of the events, which was not specifically contested by the Government, his wound continued to bleed during the hours following his return from hospital when he was kept in one of the offices of the PDFOC. The Court notes that the applicant was kept in such conditions for about seven hours, until he was provided with medical assistance at the Police Hospital (see paragraphs 17 and 18 above).

148. Overall, the developments following the police operation show that instead of taking measures for the applicant to receive proper and complete medical care in relation to his injury, the authorities sought medical assistance for him only after his condition had deteriorated to such an extent that he needed further hospitalisation (see, in particular, paragraphs 17 and 19 above).

149. In relation to the applicant's medical treatment while in detention, the Court observes that he was kept in pre-trial detention for about four months, from 24 February until 16 June 2008, which time he spent in the tuberculosis department of the Central Prison Hospital where he was admitted on 26 February 2008 (see paragraph 19 above).

150. The Government claimed that the applicant had been provided relevant conservative treatment by a pulmonologist during his stay at the Central Prison Hospital. However, the Government failed to demonstrate that the authorities had adopted a comprehensive therapeutic strategy aimed at adequately treating the applicant's health problems rather than addressing them on a symptomatic basis.

151. The applicant was released from detention on 16 June 2008 further to the acknowledgement by the administration of the Central Prison Hospital that the applicant's adequate care was not being ensured in that institution (see paragraphs 59 and 60 above). The Court notes, however, that already on 7 April 2008 the commission of experts which had been requested by the investigator to assess the applicant's medical condition had stated in its report that the applicant's illness required long-term inpatient treatment with strict bed rest in a specialist clinic, and with additional care (see paragraph 23 above). There is nothing in the evidence before the Court to suggest that the tuberculosis department of Central Prison Hospital corresponded to the profile of a specialist clinic as indicated in the expert commission's above-mentioned report. Furthermore, there is no evidence to suggest that the Central Prison Hospital had the appropriate specialist

personnel. It can therefore be concluded that for more than two months, that is from 7 April until 16 June 2008, the authorities, being aware of the specific treatment needs of the applicant's state of health, failed to ensure that treatment. Instead, the applicant was provided merely with conservative treatment until his release from detention.

152. In the light of the above, the Court finds that the applicant did not receive adequate medical assistance for his ballistic injury. The Court further finds that, while in detention, the applicant was not provided with adequate medical treatment for his other illnesses. In the Court's opinion, as a result of this lack of requisite medical care first for his injury and then for his illnesses while in detention, the applicant suffered considerable anxiety and distress which went beyond the unavoidable level of suffering inherent in detention.

153. There has accordingly been a violation of Article 3 of the Convention.

(2) Conditions of detention

154. According to the applicant's description of the conditions of his detention, Central Prison Hospital lacked basic facilities corresponding to the special needs of a person suffering from spinal tuberculosis. In particular, he was kept in a patient room which had a squat toilet with a hole in the floor (see paragraph 49 above). Considering his inability to squat as a result of his spinal condition, using such a toilet each time, as the applicant stated, caused him severe pain and humiliation. In addition, he had to suffer acute pain to manage his personal hygiene.

155. The Government did not contest the applicant's above-mentioned description of the conditions of his detention.

156. As already noted above, as early as on 7 April 2008 the commission of experts stated in their report that the applicant was in need of "additional care" considering his state of health (see paragraph 23 above). While the report had not specified the type of care required, considering the applicant's mobility difficulties and constant pain in the spine, neck and lumbar area because of his illness, he inevitably needed assistance in meeting his daily needs such as using the toilet, bathing and getting dressed and undressed. The Court observes, however, that it was acknowledged in the letter of 13 June 2008 that the Central Prison Hospital had not ensured the applicant's basic care (see paragraph 59 above). The Court also observes that the trial court eventually released the applicant on the basis of similar considerations (see paragraph 60 above).

157. To conclude, the Court finds that the applicant's detention without the requisite measures taken to ensure his basic daily needs were met resulted in a situation amounting to inhuman and degrading treatment, in breach of Article 3 of the Convention.

There has accordingly been a breach of that provision on that account.

(3) Conditions of transfer

158. The applicant further complained of the conditions of his transfer from the Central Prison Hospital to the trial court. He gave a detailed description of the conditions in which he was transferred to the courthouse each time there was a hearing. In particular, he had to sit on a wooden bench in a small cell of a standard prison van (see paragraph 62 above). The respondent Government did not contest his account of the conditions of his transport.

159. The Court observes that the applicant was transported to the courthouse, a trip of around 10 km., in standard prison vans with no special equipment installed to meet the needs of a person suffering from a serious back condition and for whom, moreover, strict bed rest had been recommended. What is more, the applicant, who had to wear a special medical corset to help him support his spine, was obliged to bend his back to get in and out of the van being helped merely by police officers, and to sit on a wooden bench without any back support. The Court notes that the authorities failed to take any corrective measures to meet the applicant's needs during the transfer and is mindful of the applicant's contention that such treatment resulted in the exacerbation of his existing back pain in the days following trips under those conditions (see paragraph 135 above).

160. While the distance from the Central Prison Hospital to the building of the trial court was relatively short – about 10 km, the Court observes that the applicant was transported there and back under those conditions at least three times – for the hearings of 19 May, 3 and 16 June 2008 (see paragraphs 57, 58 and 60 above) – that is altogether 60 km.

161. In view of the foregoing, the Court considers that the cumulative effect of the material conditions of the applicant's transfers and the overall duration of the trip was serious enough to qualify as inhuman and degrading treatment within the meaning of Article 3 of the Convention (see *Topekhin*, cited above, § 94).

162. There has therefore been a violation of Article 3 on account of the conditions of the applicant's transport to the trial court.

(4) The applicant's participation in the court hearings

163. While the applicant has specifically complained about his participation in the hearings before the trial court after 16 June 2008, that is following his release from detention, it should be noted that, as mentioned above, already on 7 April 2008 the commission of experts had indicated that the applicant needed "strict bed rest" (see paragraph 23 above). There is nothing to indicate that the latter recommendation had been revised or re-considered at any point before or after 16 June 2008.

164. In relation to the applicant's participation in the hearings after his release from detention, the Court notes that he attended all the hearings

which took place between 16 June and 9 September 2008 (see paragraph 63 above). While the exact number of the hearings has not been established, it appears that there were on average two hearings scheduled per month (see paragraph 71 above).

165. According to the applicant's submission, his treating doctors had prescribed bed rest for him but he was nevertheless obliged to attend the hearings, which caused him to suffer acute pain (see paragraph 135 above). Although the applicant has not submitted relevant medical documents to substantiate his submission that he had been prescribed bed rest by his treating doctors, the Court refers to its above observation that, after the expert report of 7 April 2008, which had prescribed strict bed rest to the applicant, no new medical evidence was obtained to suggest otherwise. In those circumstances, the Court accepts that during the period from 16 June to 9 September 2008 the applicant physically participated in the court hearings although he needed bed rest.

166. The Court notes that the applicant's medical condition eventually deteriorated to the point that he was again admitted to hospital on 9 September 2008 (see paragraph 64 above). Thereafter, by decision of 22 September 2008, the trial court took a decision to suspend the trial. Notably, in doing so the trial court, in addition to the note from the hospital confirming the applicant's hospitalisation and the need for long-term bed rest, referred to the expert report of 7 April 2008 to justify the need for suspension of the trial (see paragraph 65 above).

167. On 2 October 2008 the trial court made a decision to resume the court proceedings on the grounds that the applicant had been discharged from hospital with some improvement (see paragraph 66 above). The Court observes, however, that while the applicant had indeed been discharged from hospital with the indication of "some" improvement, there was nothing to suggest that he had been found fit to attend the hearings. The Court also notes that no forensic medical examination of the applicant giving a clear answer to the question of whether he was fit enough to participate in the court hearing was sought by the trial court (see *Korban*, cited above, § 122) before taking the decision to resume the trial. In addition, the trial court did not reconsider its decision to resume the proceedings even after the applicant's medical condition deteriorated to the extent that an ambulance was called to the court for him when he was obliged to attend the hearing scheduled on 9 October 2008 for fear of being detained once again (see paragraph 67 above). Neither did it reconsider its decision to proceed with the trial when, in response to its enquiry, the polyclinic providing outpatient treatment to the applicant submitted that bed rest had been prescribed. What is more, considering that the applicant's absence from the scheduled hearings of 20 and 30 October, 14 November and 1 December 2008 had been treated as unjustified, it made a decision to compel him with the help

of the police, who took the applicant from his home to the court by force on at least one occasion (see paragraphs 69, 71 and 74 above).

168. The Court lastly notes judge M.'s indifferent attitude towards the applicant's medical condition when the latter eventually attended the hearing of 17 March 2009 after the judge had refused to examine the application seeking the cancellation of the measure of restraint in the applicant's absence. Thus, when the applicant was finally transferred to the court later on the same day, he refused to examine the application although he had adjourned the hearing until the applicant's presence could be ensured (see paragraph 76 above). In this respect the Court cannot overlook that on another occasion the court hearing had not taken place because of the prosecutor's failure to attend even after the applicant had been compelled to attend the court (see paragraph 74 above).

169. In the Court's opinion, the above-mentioned events must have caused the applicant not only physical pain as he submits, but also emotional distress, and aroused strong feelings of anguish and powerlessness capable of humiliating him. The Court considers that the intensity of these feelings exceeded the threshold of severity required for Article 3 to apply. It finds therefore that the applicant was subjected to degrading treatment.

170. Accordingly, there has been a violation of Article 3 of the Convention on this account.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

171. The applicant complained that there was no court decision authorising his detention from 24 April until 16 June 2008 (see paragraphs 53 and 60). He relied upon Article 5 § 1 of the Convention, which, in so far as relevant, provides:

> "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:
>
> ...
>
> (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".

A. Admissibility

172. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

173. The Government submitted that the applicant's detention between 24 April and 16 June 2008 was in compliance with the domestic law.

174. The applicant contested that submission.

175. Where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention. This standard requires that all laws be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports of Judgments and Decisions* 1998-VII).

176. The Court notes that it has already examined an identical complaint in other cases against Armenia, in which it concluded that there had been a violation of Article 5 § 1 of the Convention in that the applicants' detention was not based on a court decision and was therefore unlawful within the meaning of that provision (see *Poghosyan v. Armenia*, no. 44068/07, §§ 56-64, 20 December 2011; *Piruzyan v. Armenia*, no. 33376/07, §§ 81-82, 26 June 2012). It sees no reason to reach a different conclusion in the present case and concludes that the applicant's detention from 24 April to 16 June 2008 (see paragraphs 53 and 60 above) was unlawful within the meaning of Article 5 § 1 of the Convention.

177. There has accordingly been a violation of Article 5 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

178. 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

179. The applicant claimed 5,000 euros (EUR) in respect of pecuniary damage. That amount represented the cost of his medical treatment in Germany in June 2009. The applicant further claimed EUR 40,000 in respect of non-pecuniary damage.

180. The Government submitted that there was no causal link between the pecuniary damage claimed and the alleged violations of the applicant's rights under the Convention. Furthermore, the applicant had suffered from

the illnesses in question before his detention. In relation to the applicant's claim in respect of non-pecuniary damage, the Government stated that he had failed to provide any evidence for his allegation that he had suffered non-pecuniary damage.

181. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant undoubtedly suffered non-pecuniary damage as a result of the violations found. It therefore awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

182. The applicant also claimed 2,000,000 Armenian drams for the legal costs incurred before the Court, supported by a copy of a contract for legal services pursuant to which the applicant was liable to pay that amount in the event of adoption of a judgment in his favour by the Court. The applicant also claimed EUR 92 for postal expenses.

183. The Government submitted that, since the applicant had not yet paid the sum in question and was only obliged under the contract to do so in case of a favourable outcome, the legal costs claimed could not be considered as actually incurred. In any event, the amount claimed was exaggerated and unreasonable.

184. 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 were actually and necessarily incurred and are reasonable as to quantum.

185. The Court has previously recognised the validity of contingency fee agreements for the purposes of making an award for legal costs (see, for the most recent example, *Anahit Mkrtchyan v. Armenia*, no. 3673/11, § 112, 7 May 2020). The Court sees no reason to depart from that approach in the present case. On the other hand, the Court reiterates that legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002).

186. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

187. 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, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to carry out an effective investigation of the applicant's ill-treatment and firearm injury during the police operation;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the force used against the applicant in the course of the police operation;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the quality of medical treatment provided to the applicant while under arrest and detention;

6. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention;

7. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's transfers to the trial court;

8. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's participation in the hearings before the trial court;

9. *Holds* that there has been a violation of Article 5 § 1 of the Convention in that the applicant's detention between 24 April and 16 June 2008 lacked a legal basis;

10. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

11. *Holds*
    (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
        (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 18 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Tim Eicke
Deputy Registrar	President