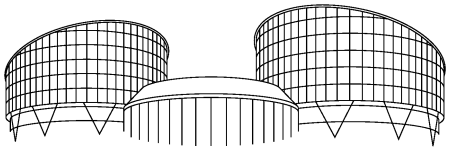

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DAVTYAN v. ARMENIA

(Application no. 29736/06)

JUDGMENT

STRASBOURG

31 March 2015

FINAL

30/06/2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Davtyan v. Armenia,

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

Josep Casadevall, *President,*
Luis López Guerra,
Dragoljub Popović,
Kristina Pardalos,,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 10 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 29736/06) 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 Artashes Davtyan ("the applicant"), on 21 July 2006.

2. The applicant was represented by Ms L. Sahakyan and Mr A. Ghazaryan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been denied requisite medical assistance in detention and that his conviction had violated the guarantees of Article 7 of the Convention.

4. On 26 May 2009 the complaints concerning the alleged lack of requisite medical assistance in detention and the foreseeability of application of Article 325 of the Criminal Code of 2003 to the applicant's case were communicated to the Government and the remainder of the application was declared inadmissible. The seat of judge in respect of Armenia being currently vacant, the President of the Court decided to appoint Judge Johannes Silvis to sit as an *ad hoc* judge (Rule 29 § 2 (a) of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Yerevan.

6. From 1997 to 1999 the applicant worked as the executive director of the Credit Service Bank (hereafter, the Bank).

A. The criminal proceedings against the applicant

7. On 19 March 2002 the prosecutor decided to institute criminal proceedings under paragraph 2 of Article 182 of the former Criminal Code (hereafter, the former CC) on account of abuse of official capacity by the former management of the Bank through embezzlement of funds entrusted to it in June 2001 by another company. It appears that at the material time the applicant worked as an advisor to the chamber of control of the Armenian parliament.

8. On 31 March 2003 the applicant was arrested on suspicion of large-scale embezzlement, abuse of official capacity and official falsification under paragraph 4 of Article 90, paragraph 1 of Article 182 and Article 187 of the former CC.

9. On 1 April 2003 the applicant was formally charged under paragraph 4 of Article 90, paragraph 1 of Article 182 and Article 187 of the former CC with embezzlement through abuse of his official capacity and official falsification through preparation and use of false accounting documents during his office as the executive director of the Bank from 1997 to 1999, causing damage to the Bank and its clients. It appears that ten other persons were also charged with involvement in these or related crimes.

10. On the same date the Kentron and Nork-Marash District Court of Yerevan granted the investigator's application to have the applicant placed in pre-trial detention for a period of two months. The applicant alleged that during the hearing his lawyer had requested the court not to impose detention as a preventive measure, due to the applicant's poor health. The applicant's detention was subsequently extended by the District Court on two occasions until 31 August 2003.

11. On 2 April 2003 a group of nine members of the Armenian Parliament applied to the Prosecutor General requesting that the applicant's detention be replaced by another preventive measure in view of, *inter alia*, the applicant's poor health.

12. On 10 April 2003 the General Prosecutor's Office addressed a letter to the Head of Staff of the Parliament, stating that the applicant's release was not possible since he had committed a grave crime and had refused to return embezzled funds.

13. On 1 August 2003 a new Criminal Code (hereafter, the new CC) entered into force in Armenia.

14. On 11 August 2003 the charges against the applicant were adapted to the new CC and he was formally charged under Article 179 § 3 (1), Article 214 § 1 and Article 325 § 2 of the new CC.

15. On 14 November 2005 the Kentron and Nork-Marash District Court of Yerevan found the applicant guilty under Article 179 § 3 (1) and Article 325 § 1 of the new CC. In particular, the applicant was found to have executed a number of financial operations involving bonds and fixed assets, the proceeds of which he embezzled. The District Court sentenced the applicant to six years' imprisonment without confiscation of property under Article 179 § 3 (1) and terminated the proceedings under Article 325 § 1 by applying a statute of limitations with reference to Article 35 § 1 (6) of the Code of Criminal Procedure (CCP).

16. On 29 November 2005 the applicant lodged an appeal.

17. On 10 April 2006 the Criminal and Military Court of Appeal decided to uphold the judgment of the District Court. The Court of Appeal found, *inter alia*, that:

> "The first instance court, considering [the applicant's] ... guilt in preparing and using false documents to be substantiated, rightly terminated the proceedings under Article 325 § 1 of [the CC] on the ground envisaged by Article 35 [§ 1] (6) of [the CCP]."

18. On 20 April 2006 the applicant lodged an appeal on points of law. In his appeal he argued, *inter alia*, that Article 325 of the new CC should not have been applied to his case because documents of commercial organisations could not be considered "official". He should therefore have been penalised under Article 214 of the new CC instead.

19. On 1 June 2006 the Court of Cassation dismissed the applicant's appeal. The Court of Cassation found, *inter alia*, that:

> "Documents to which public authorities give legal significance are considered official. Official documents may be issued both by public authorities, their officials and bodies of local self-government, and by legal entities, commercial and other types of organisations. Such documents as credit or other financial documents drawn up by commercial banks can also be considered as [official documents], since they also have legal significance..."

B. The alleged lack of requisite medical assistance in detention

20. On 3 April 2003 the applicant was transferred to Nubarashen detention facility.

21. On 4 April 2003 the applicant was examined at the facility's medical unit and diagnosed as having a throat tumour. He also complained of a sore throat, loss of voice and chest pain.

22. On 28 April 2003 the applicant was examined by an external doctor who recommended that the applicant be examined by an otolaryngology specialist.

23. On 29 April 2003 the applicant was examined by an otolaryngology specialist who confirmed the diagnosis of a throat tumour. In order to determine the nature of the tumour, the doctor recommended: (a) a biopsy to be carried out; (b) computer tomography of the throat; and (c) further examination and treatment.

24. On 8 May 2003 the applicant, apparently in reaction to the medication that he was taking, showed symptoms of anaphylactic shock such as urticaria, coldness of extremities, severe shivering and a drop in blood pressure to 20/40 followed by loss of consciousness. First aid was provided by the detention facility's medical unit and an ambulance was called. It appears that thereafter the applicant continued to experience symptoms of allergy such as face and body swelling, itching and blood pressure fluctuations.

25. On 20 May 2003 an external allergy specialist was called who diagnosed the applicant as suffering from Quincke's oedema, pollinosis and an atypical form of bronchial asthma.

26. On 13 June 2003 the applicant's condition drastically deteriorated. He experienced laboured breathing, facial swelling, drop in blood pressure to 50/20, swelling of extremities and Quincke's oedema. First aid was provided.

27. On 10 July 2003 the applicant was examined by a psychiatrist. The applicant complained of low spirits, irritability, insomnia and tachycardia, as well as recurring headaches, chest pains and high blood pressure due to frequent emotional stress. From that day on the applicant remained under the psychiatrist's regular supervision, during which it was found that the applicant was suffering from depression, fits of anger, irritability, insomnia, headaches, chest pains, tension and anxiety.

28. On 5 November 2003 the applicant was examined by prison doctor N., who noted his complaints of haemoptysis, hoarseness and a weakened swallowing reflex. The applicant was also observed to suffer increased pallor and significant weight loss. It appears that these symptoms continued from that day on.

29. On 10 January 2004 the applicant was examined by prison doctor N., who noted his complaints of skin rash and itching and shortness of breath, which were apparently caused by emotional stress. Medication was prescribed.

30. On 20 March 2004 the applicant complained to prison doctor N. of asthenia, hoarseness and a cough which turned into asphyxia.

31. The applicant alleges that on or around 27 April 2004 he was informed that he was going to be transferred from the detention facility's medical unit to an ordinary cell. The applicant refused to be transferred,

referring to his poor health, so he was moved to a punishment cell for three days. On the first night in the punishment cell he was not given blankets or bed linen. On the second night the applicant's health deteriorated and he experienced laboured breathing, asphyxia attacks and high blood pressure. The applicant asked the guard to call the feldsher (doctor's assistant). When the feldsher arrived, he was unable to enter the punishment cell because it was locked and the guard did not have the key. It took half an hour to find the key after the feldsher protested. On the morning of the third day the applicant was transferred back to the medical unit.

32. On 20 May 2004 the applicant's health deteriorated. According to his medical card, his allergy worsened at night and he fell into a collaptoid state. The applicant complained of a cough, itchy skin and nose, shortness of breath, asphyxia attacks, and swelling of the face and lips.

33. On 17 July 2004 a cardiologist was invited to examine the applicant, who complained of severe chest pain, headache and shortness of breath. His blood pressure rose to 180/100.

34. It appears that from August 2004 to January 2005 the applicant continued to show all of the above symptoms at regular medical check-ups.

35. On 14 January and 23 February 2005 an ambulance was called as the applicant showed symptoms of stenocardia and hypertension. His blood pressure rose to 160/100.

36. On 27 January 2005 the applicant was examined by a specialist and was advised, *inter alia*, to undergo an endoscopic examination of the throat and biopsy of the tumour.

37. By a letter of 4 February 2005 the acting chief of Nubarashen detention facility and the head of its medical unit informed the District Court that the applicant had made numerous complaints about his health, including asthenia, loss of weight, voice hoarsening and haemoptysis. After an examination by specialists of the Ministry of Health, the applicant was diagnosed as having a throat tumour. The applicant therefore needed to be examined in a specialised clinic of the Ministry of Health.

38. On an unspecified date in April 2005 the applicant was examined by an external doctor who noted that, in order to reach a final diagnosis concerning the applicant's throat tumour, he needed to undergo computer tomography or a magnetic resonance imaging (MRI) scan.

39. On 8 April 2005 prison doctor N. informed the District Court that the applicant was unable to participate in the hearing to take place on that date because he was suffering from Quincke's oedema.

40. The Government alleged, which the applicant disputed, that in April 2005 the doctor suggested that the applicant be transferred to a specialised establishment for treatment, but the applicant refused.

41. On an unspecified date in May 2005 the applicant experienced a rash, skin and nose itch, cough and laboured breathing followed by asphyxia and loss of consciousness. His face and lips were swollen. An ambulance

was called and first aid was provided. The diagnosis of Quincke's oedema, pollinosis and an atypical form of bronchial asthma was confirmed.

42. On 16 May 2005 the applicant was provided with first aid after showing the following symptoms: severe headaches, dizziness, chest pain, shortness of breath and a disruption in coordination of movements. He further experienced persistent dizziness, facial swelling and excessive sweating. The applicant was diagnosed with hypertensive crisis and an acute disturbance of cerebral blood circulation of the vertebrobasilar area.

43. By a letter of 9 June 2005 the chief of Nubarashen detention facility and the head of its medical unit informed the District Court that the applicant had recently been showing symptoms of hoarseness, haemoptysis and asthenia, and that it was impossible to conduct a proper examination at the detention facility's medical unit. They requested the court to allow the applicant's transfer to the Armenia Medical Centre in order to carry out a specialised examination, to clarify the diagnosis and to decide on further treatment. The District Court granted this permission.

44. On 10 June 2005 the applicant was examined by an otolaryngologist at the Armenia Medical Centre. A tumour on the vocal cords was diagnosed and he was advised to undergo surgical treatment and a biopsy of the tumour was recommended.

45. By a letter of 20 December 2005 the acting chief of Nubarashen detention facility and the head of its medical unit informed the applicant's lawyer that the applicant had been admitted for in-patient treatment at the detention facility's medical unit with the following complaints: laboured breathing, asphyxia, haemoptysis, voice hoarsening, headache, dizziness and frequent loss of consciousness. Following a number of examinations the applicant was diagnosed as suffering from a throat tumour of unknown nature, allergy of unknown aetiology, Quincke's oedema and fits of anaphylactic shock. According to the conclusions reached by the specialists of the Ministry of Health, the applicant needed to undergo specialised instrumental and histological examinations and surgery. Recently the fits of anaphylactic shock and loss of consciousness had become more frequent. The applicant was under permanent medical surveillance and was receiving symptomatic treatment.

46. By a letter of 22 December 2005 the acting chief of Nubarashen detention facility and the head of its medical unit informed the applicant's lawyer that it was not possible to carry out the required examinations and surgery for the applicant at the detention facility's medical unit.

47. On 23 December 2005 the applicant's lawyer filed an application with the Court of Appeal, requesting that the applicant be released for health reasons. Copies of the letters of 20 and 22 December 2005 were attached to this application. The applicant alleges that the Court of Appeal included this application in the case file without ruling on it.

48. At the hearing of 26 January 2006 the applicant's lawyer filed another application similar to that of 23 December 2005. She further requested the court to summon the applicant's prison doctor. A copy of the applicant's medical record was attached to this application. It appears that the Court of Appeal decided to postpone the examination of this application in order to establish "certain essential circumstances". The court further requested the applicant's lawyer to submit a certified copy of the applicant's medical record.

49. At the hearing of 27 January 2006 the applicant announced that he was unable to testify because of his inability to speak and that he would testify in writing. He requested the court to release him because of his poor health. It appears that the Court of Appeal again decided to postpone the examination of this request in order to establish certain essential circumstances.

50. At the hearing of 31 January 2006 prison doctor N. was examined in court. The doctor, at the outset, presented details of the diseases suffered by the applicant and the dynamics of their development. He further submitted that all possible treatment had been prescribed but, despite occasional improvements, the applicant's condition continued to deteriorate. The anti-allergy treatment had yielded no results. The applicant had been examined on numerous occasions by otolaryngology and oncology specialists who had unanimously concluded that the applicant needed examination and treatment in a specialised clinic. There was no possibility to carry out such treatment at the detention facility's medical unit, so the applicant received symptomatic treatment. Shortness of breath and asphyxia attacks had become more frequent in December 2005 and January 2006 and were accompanied by coughing and haemoptysis leading to loss of consciousness. The applicant had been resuscitated on several occasions but the growth of the tumour could result in respiratory obstruction causing the applicant's death, which could occur in a matter of 3 to 4 minutes. Doctor N. recommended the applicant's immediate transfer to a specialised clinic in order to eliminate the risk of death. He further stated that not only Nubarashen detention facility's medical unit but the entire penitentiary system lacked the necessary specialists and equipment to carry out a full-scale examination and treatment of the applicant.

51. At the same hearing the applicant's lawyer filed an application requesting the applicant's release, which was dismissed by the Court of Appeal. She further requested the court to examine the previously filed applications concerning the applicant's state of health. It appears that the Court of Appeal again decided to postpone the examination of these applications, stating that the information at its disposal was not sufficient to resolve the question of detention.

52. It appears that during that period the applicant refused to be transferred to a specialised clinic. He alleged that his refusal was motivated

by the fact that no assurances had been given to him that the required surgery would actually be performed, since another transfer to an outside clinic without such surgery would have been useless and would only have aggravated his condition.

53. On 6 February 2006 the applicant was transferred to the otolaryngology department of the Armenia Medical Centre because of a drastic deterioration in his health. The applicant underwent another examination and was diagnosed with chronic laryngotracheitis and malignisation of the tumour. An urgent in-patient examination and surgical treatment in a specialised clinic were recommended.

54. At the hearing of 8 February 2006 the applicant was unable to finish his testimony because of his inability to speak and the hearing was adjourned.

55. By a letter of 9 February 2006 the chief of Nubarashen detention facility informed the head of the Criminal Executive Department of the Ministry of Justice that, based on the results of the relevant medical examinations, the conclusions of specialists and the progressive nature of the applicant's disease, he needed to undergo urgent surgery in a specialised clinic, as the tumour was growing and could cause respiratory obstruction.

56. At the hearing of 15 February 2006 the applicant's lawyer filed another application with the Court of Appeal seeking to have the applicant released because of his poor health. A certified copy of the applicant's medical record and a copy of the results of the examination of 6 February 2006 were attached to this application. The Court of Appeal dismissed this application on the ground that the examination of the case was in its final stage and there were no relevant documents, such as an expert opinion, justifying the need to carry out the applicant's urgent examination and treatment in a specialised clinic.

57. By a letter of 27 February 2006 the chief of Nubarashen detention facility and the head of its medical unit informed the Court of Appeal that the applicant had been examined by specialists at the Armenia Medical Centre and it had been established that his throat tumour had grown and that he was in need of urgent surgery. They requested the applicant's transfer to the Medical Centre for surgery. The Court of Appeal granted this request.

58. On 2 March 2006 the head of the detention facility's medical unit informed the Court of Appeal that the applicant was unable to participate in the hearing to take place on that date because he was suffering from fits of asphyxia.

59. On 4 March 2006 the applicant was transferred to the Armenia Medical Centre. He was diagnosed as having "a vocal cord tumour (C-R?), first degree stenosis and, as accompanying pathologies, nasal septum deviation and chronic hypertrophic rhinitis". The applicant was advised to undergo two operations. The first operation was scheduled for 14 March

2006 but was postponed upon the applicant's request, as he wished to participate in a court hearing in his case.

60. On 18 March 2006 the applicant was examined by a psychiatrist who diagnosed him as suffering from reactive depression accompanied by a phobic syndrome. It appears that the applicant showed symptoms of suicidal thoughts. Administration of tranquillisers was recommended.

61. On 23 March 2006 the applicant underwent his first operation. Partial excision of the mucous membrane of the nasal septum and a double-sided inferior and right-side medial conchotomy were performed. The doctors noted that the applicant's mental condition prevented the second operation being carried out and advised that it be performed after the applicant's general condition had stabilised.

62. On 3 April 2006 the applicant was again examined by a psychiatrist, who diagnosed him as suffering from a severe form of depression without mental symptoms. The psychiatrist recommended that treatment be continued and the applicant be kept under strict supervision to prevent possible suicide attempts.

63. On 5 April 2006 the applicant's lawyer filed an application with the Court of Appeal requesting the applicant's release on, *inter alia*, health grounds. The applicant alleges that the Court of Appeal postponed the examination of this request without giving any reasons.

64. On 25 April 2006 the applicant underwent his second operation which involved the removal of polyps on the vocal cords. The operation went smoothly but complications, including inflammation of the vocal cords, adhesions and haemorrhage, occurred in the post-operative period.

65. On 26 May 2006 the applicant's condition had improved, and he was discharged from the Armenia Medical Centre and transferred back to the detention facility's medical unit.

66. On 23 June 2006 the applicant was released on parole.

II. RELEVANT DOMESTIC LAW

A. The Criminal Code of 1961 (no longer in force as of 1 August 2003) and the Criminal Code of 2003 (in force from 1 August 2003)

67. For the relevant provisions of the Criminal Codes see *Martirosyan v. Armenia* (no. 23341/06, §§ 35-36, 5 February 2013).

B. The Law on Conditions for Holding Arrested and Detained Persons

68. According to Article 13, a detainee has the right, *inter alia*, to health care, including the right to receive sufficient food and urgent medical assistance.

69. According to Article 21, the administration of a detention facility shall ensure the sanitary, hygienic and anti-epidemic conditions necessary for the preservation of the health of detainees. At least one general practitioner shall work at the detention facility. A detainee in need of specialised medical assistance must be transferred to a specialised or civilian medical institution.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

70. The applicant complained that his continued detention amounted to inhuman and degrading treatment due to his poor health and lack of requisite medical assistance. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The Government

72. The Government submitted that the applicant had been provided with adequate medical assistance. He was under constant supervision, received medicine and first aid whenever necessary, was kept mainly at the detention facility's medical unit and received treatment. He had been examined several times by the prison doctors and was also allowed to invite external doctors of his own choice.

73. Referring to a CPT report of October 2002, the Government alleged that the detention facility had enough specialised staff. Furthermore, the applicant was twice transferred for examination to an external specialised clinic, the Armenia Medical Centre, where eventually two operations were performed and he was discharged in an improved condition. There was never any intention to debase or humiliate the applicant and there were no medical emergencies or a risk of such emergencies. Therefore the applicant could not have suffered any mental distress or anxiety.

74. The Government further alleged that it was the applicant himself who had refused to be transferred to a specialised clinic and was therefore responsible for the delays. He had done this intentionally so that his health would deteriorate, which would increase his chances for release. Thus, he refused transfer in April 2005 and again at the end of January 2006. Besides, the urgency of surgery was never mentioned before 10 June 2005 and his diseases were not in general life-threatening.

(b) The applicant

75. The applicant submitted that he had been denied adequate medical assistance in detention over a long period of time which had caused him severe physical and mental pain and put his life in imminent danger. There was no follow-up to the doctor's recommendation of 29 April 2003 and for about three years he received only symptomatic treatment before finally being transferred to an outside hospital in March 2006 for surgery. The long delays in conducting the biopsy test and surgery were unjustified.

76. His grievances were about the failure to provide *requisite* rather than *regular* medical assistance. The fact that he was periodically checked by doctors, even at his own request, did not imply that the assistance provided was adequate and specialised. None of the specialists referred to by the Government in the CPT report were specialised in the area that was required in his case, nor were the required specialised facilities and equipment available. Despite this, for a prolonged period of time the authorities did not take measures to transfer him for specialised examination and treatment, and the courts failed to examine his applications for release.

77. The applicant also claimed that he had refused to be transferred to an outside hospital only once, at the end of January 2006. The Government's claim that he also did so in April 2005 was untrue. He refused to be transferred since it was only for further tests, whereas it had been known since June 2005 that he needed surgery rather than just further examinations. His refusal was justified because in June 2005 he had already been transferred to an outside hospital once for tests, but no treatment, and his condition had worsened after being returned to the detention facility. It was nonsense to suggest that, being aware of his critical state of health, he would refuse to be transferred on purpose. Lastly, contrary to the

Government's claim, his need for treatment was urgent and this was confirmed by the diagnosis of 6 February 2006.

2. The Court's assessment

(a) General principles

78. The Court observes at the outset that Article 3 enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

79. It reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C; and *Dougoz v. Greece*, no. 40907/98, § 44, ECHR 2001-II). Although the question of whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see, among other authorities, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

80. The Court observes that it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 (see *Mouisel v. France*, no. 67263/01, § 38, ECHR 2002-IX). Although this Article cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical assistance (see *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005, and *Khudobin v. Russia*, no. 59696/00, § 93, ECHR 2006-XII (extracts)).

81. The Court has also emphasised the right of all prisoners to conditions of detention which are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

(b) Application of these principles in the present case

82. The Court notes at the outset that it is undisputed that the applicant suffered from a number of serious illnesses, including a tumour on the vocal cords which required specialised examination and treatment. The recommendation to carry out a biopsy, a computer tomography of the throat and further examination and treatment was made on 29 April 2003, that is less than a month after the applicant was placed in detention (see paragraph 23 above). However, it appears that none of these tests were carried out promptly.

83. The Court further notes that similar recommendations were made in January and April 2005 (see paragraphs 36 and 38 above) but similarly, to no avail. The domestic courts were informed on numerous occasions about the applicant's state of health and the need for a specialised examination and treatment, including in February 2005 by the administration of the detention facility (see paragraph 37 above). It follows from the materials of the case, including the statement of the prison doctor made at the hearing of 31 January 2006 (see paragraph 50 above), that the detention facility – and even the entire penitentiary system – had neither the specialists nor the specialised equipment necessary to perform the tests and treatment in question. Despite this, the applicant was transferred from the detention facility to an outside hospital for a specialised examination only in June 2005 after the administration had repeated its request. Thus, the doctor's recommendation of 29 April 2003 for a specialised examination was followed up for the first time more than two years later.

84. Furthermore, following the examination of June 2005 a further test and surgery were recommended (see paragraph 44 above). However, it appears that there was no immediate follow-up to this either, and it was only in March 2006 that the applicant was transferred to an outside hospital for the recommended surgery, apparently after his health deteriorated drastically and his condition was confirmed to be of a life-threatening nature.

85. The Court notes that the Government's claim that the applicant refused to be transferred for specialised treatment in April 2005 is not supported by the evidence in the case. It is true, however, that at least on one occasion, namely at the end of January 2006, the applicant refused to be transferred to an outside hospital. However, the Court does not attach significant importance to that fact, taking into account that by that time more than two years and nine months had elapsed since the doctor's initial recommendation for specialised treatment and another seven months had elapsed since surgery had been recommended. No explanation was provided by the Government for such significant delays, which cannot be considered as justifiable in view of the seriousness of the applicant's state of health.

86. The Court also notes that it is not in dispute between the parties that some treatment was provided to the applicant during that period. However,

this was not the specialised treatment that had been recommended by the doctors and appears to have been only of a symptomatic nature.

87. As regards the Government's argument that there was no evidence to suggest that the applicant had suffered any medical emergencies or any mental distress during the period in question, the Court notes that it appears from the circumstances of the case that the applicant's health was gradually and steadily deteriorating, at times resulting in, *inter alia*, haemoptysis, asphyxia attacks and loss of consciousness. Moreover, on several occasions he was diagnosed by a doctor as suffering from depression, anxiety and suicidal tendencies.

88. The Court cannot speculate on whether these developments were the result of the failure to provide the applicant with the specialised examination and treatment that he required, but points out that it is not indispensable for a failure to provide requisite medical assistance to lead to any medical emergency or otherwise cause severe or prolonged pain in order to find that a detainee was subjected to treatment incompatible with the guarantees of Article 3. The fact that a detainee needed and requested such assistance but it was unavailable to him may, in certain circumstances, suffice to conclude that such treatment was degrading within the meaning of that Article (see *Sarban*, cited above, §§ 86-87 and 90, and *Ashot Harutyunyan v. Armenia*, no. 34334/04, § 114, 15 June 2010).

89. Thus, as already indicated above and as established by medical professionals, the applicant was in need of specialised examinations and treatment which were, however, denied to him over a prolonged period of time. In such circumstances, the conditions of the applicant's detention went beyond the unavoidable level of suffering inherent in detention and can be said to have amounted to inhuman and degrading treatment.

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

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

91. The applicant complained that his conviction had violated the guarantees of Article 7 of the Convention, which reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

A. The parties' submissions

92. The Government submitted that the interpretation of the notion of "official document" was consistent throughout both criminal codes and that the courts had rightly applied Article 325 of the new CC. There was therefore no issue of legal certainty under Article 7 of the Convention. The Government submitted a number of examples of domestic practice in support of their position.

93. The applicant submitted that Article 325 of the new CC, as well as its predecessor, namely Article 213 of the former CC which was in force at the time of committing the offence, were not applicable to his case. Furthermore, the Court of Cassation's interpretation of the notion of "official document" contained in Article 325 was inconsistent with the interpretation of that notion under Article 213. There was a significant discrepancy between the statutory norm and the case-law, and the legal provisions in question failed to meet the requirement of foreseeability.

B. The Court's assessment

94. The Court reiterates that Article 7 is not confined to prohibiting the retroactive application of criminal law to the disadvantage of an accused. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty and the principle that criminal law must not be extensively construed to the detriment of an accused, for instance by analogy. From these principles it follows that an offence must be clearly defined in law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable. When speaking of "law" Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises written as well as unwritten law and implies qualitative requirements, notably those of accessibility and foreseeability (see, among other authorities, *S.W. v. the United Kingdom* and *C.R. v. the United Kingdom*, judgments of 22 November 1995, Series A no. 335-C, §§ 34-35 and §§ 32-33; *Streletz, Kessler and Krenz v. Germany* [GC], no. 34044/96, 35532/97, 44801/98, § 50, ECHR 2001-II; and *Del Río Prada v. Spain* [GC], no. 42750/09, §§ 78 and 79, ECHR 2013).

95. The Court notes that it has already examined an identical complaint in another case against Armenia which, moreover, concerned the applicant's co-accused in the same criminal trial (see *Martirosyan*, cited above, §§ 58-64). The Court concluded in that case that there had been no retroactive application of criminal law to the applicant's disadvantage, since after the fall of the Soviet regime the Armenian domestic courts consistently applied the predecessor of Article 325 of the new CC, namely Article 213 of

the former CC, to cases of falsification of documents bearing a legal significance, including documents from private enterprises. It has no reasons to depart from that finding in the present case, which has practically identical circumstances.

96. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed a total of 11,380 euros (EUR) in respect of pecuniary damage. This included the costs of his stay at the Armenia Medical Centre (EUR 450), the costs of medication which had not been provided at the detention facility (EUR 900), food parcels (EUR 9,400) and transport costs (EUR 630) for his relatives to visit the detention facility. He further claimed EUR 40,000 in respect of non-pecuniary damage.

99. The Government submitted that the applicant had failed to provide any evidence of having incurred the costs claimed. In any event, the applicant's stay at the Armenia Medical Centre and the medication at the detention facility had been paid for from the State budget. As to the non-pecuniary damage, the applicant had suffered no medical emergency which could have given rise to anxiety or mental anguish.

100. The Court notes that the applicant did not substantiate his claim for pecuniary damage with any evidence; it therefore rejects this claim. On the other hand, it awards the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

101. The applicant also claimed EUR 13,000 for the legal costs incurred before the domestic courts and the Court, as well as EUR 60 for postal expenses.

102. The Government submitted that the applicant had failed to submit any proof in support of his legal costs. In any event, if the Court were to award legal costs, the sum claimed was excessive and a further reduction was to be applied since a large part of the applicant's complaints had been declared inadmissible.

103. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant failed to submit any evidence that the legal costs had been actually incurred or that such costs were payable in the future. It therefore rejects this part of the claim. The Court, nevertheless, awards the applicant EUR 60 for postal expenses.

C. Default interest

104. 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. *Declares* the complaint concerning the alleged lack of requisite medical assistance in detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 60 (sixty 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;

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

Done in English, and notified in writing on 31 March 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Josep Casadevall President