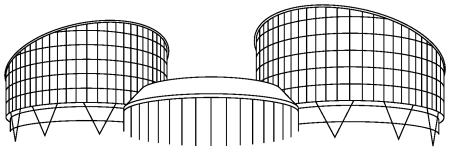

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NALBANDYAN v. ARMENIA

(Applications nos. 9935/06 and 23339/06)

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.

In the case of Nalbandyan v. Armenia,

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

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy 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 two applications (nos. 9935/06 and 23339/06) 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 three Armenian nationals, Mr Bagrat Nalbandyan ("the first applicant"), Ms Narine Nalbandyan ("the second applicant") and Ms Arevik Nalbandyan ("the third applicant") - ("the applicants"), on 8 February 2006 and 10 May 2006 respectively.

2. The applicants were represented by Ms S. Safaryan, a lawyer 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 applicants alleged, in particular, that they had been ill-treated while in police custody in June and July 2004, that there had been no effective investigation into their allegations of ill-treatment, that the first and second applicants had been deprived of effective legal assistance and that the first applicant had been unlawfully denied access to the Court of Cassation.

4. On 20 October 2009 the applications were communicated to the Government. 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 applicants were born in 1961, 1964 and 1988 respectively. The first and second applicants appear to have been serving prison sentences in Kosh and Abovyan penitentiary institutions at the time of submission of their application. The third applicant lives in the town of Vardenis, Armenia.

6. The first and second applicants are husband and wife. The third applicant is their daughter. At the material time they resided in Vardenis, in the Gegharkunik Region of Armenia.

A. Criminal proceedings against the applicants and their alleged ill-treatment

7. On 8 June 2004 criminal proceedings were instituted on account of the murder of a local girl who was apparently the third applicant's classmate and whose body was found not far from the applicants' home.

8. The first applicant alleges that on the same date he was taken to the Vardenis Police Department where he was unlawfully kept without his arrest being formally recorded. At the police department he was subjected to continual beatings by police officers in an attempt to coerce him to confess to the above-mentioned murder.

9. On 24 June 2004 the Gegharkunik Regional Court found the first applicant guilty under Section 182 of the Code of Administrative Offences of maliciously disobeying lawful orders of police officers and sentenced him to fifteen days' imprisonment. The first applicant was found to have used foul language in the street and to have disobeyed the police officers who tried to call him to order.

10. The first applicant alleges that the above decision was a fake and that in reality he was kept at the police department during that entire period in connection with the above murder. The administrative penalty imposed on him was simply used as a means to legitimise his continued unlawful deprivation of liberty.

11. The second and third applicants allege that from 8 June 2004 onwards they were also under constant pressure from the local law-enforcement officers, being frequently taken to the police department and pressurised and coerced to confess to the murder or to incriminate each other.

12. On 30 June 2004 the second applicant, together with a number of other residents of Vardenis, filed a complaint with the General Prosecutor and the Chief of the Armenian Police, alleging that the first applicant had been unlawfully detained since 8 June 2004 in connection with the above

murder and that the applicants' family had been terrorised by the local law-enforcement officers. They further alleged that the second applicant had been invited to the Vardenis Police Department where she was ordered by the Chief of Department, Vi.H., to admit that the first applicant had wanted to rape the victim and that she, having found out about it, had killed the girl out of jealousy. They alleged that the second applicant had been beaten but had refused to confess.

13. The second applicant alleges that on 8 July 2004 she was invited to the Vardenis Police Department where Chief of Department Vi.H. ordered her to testify against the first applicant. When she refused to do so, she was beaten by V.H. and a number of other law-enforcement officers, including the deputy of the criminal investigation unit, N.H., two officers of the criminal investigation unit, K.N. and K.M., and the Gegharkunik Regional Deputy Prosecutor, F.B. She was beaten on her feet with a baton and when she fainted the police officers would bring her back to consciousness and continue the beating. Thereafter the police officers brought the third applicant to the police department and locked her up in a nearby, dark room infested with rats. They threatened the second applicant that they would rape the third applicant if she refused to confess, after which she confessed to the murder. It appears that the first applicant also confessed to having assisted the second applicant in the murder.

14. The third applicant alleges that she was taken to the police department on numerous occasions, frequently at late hours, where she was humiliated by the police officers, threatened with rape and pressured to admit that it was the second applicant who had committed the murder and that the motive was the strained relationship between her and the victim. She further alleges that she saw both her father and her mother at the police department and that they bore signs of ill-treatment.

15. On 9 July 2004 the first and second applicants were formally arrested in connection with the above-mentioned murder. It appears that a confrontation was held between the second and third applicants, during which the second applicant admitted having committed the murder and stated that the third applicant had helped her to dispose of the body.

16. On the same date the first and second applicants refused the services of a lawyer who had been invited to participate in the case by the investigator. They allege that they did so because they did not trust the investigator's choice. It appears that the applicants did not request that another lawyer be appointed instead.

17. The third applicant alleges that on the night from 9 to 10 July 2004 she was kept at Vardenis Police Department in an individual cell which had no lights and was infested with mice.

18. On 10 July 2004 the second applicant participated in an investigative measure at the scene of the crime which was recorded on film.

19. On the same date from 9.20 to 10 p.m. the third applicant was questioned as a witness by Gegharkunik Regional Deputy Prosecutor, F.B. She stated that the second applicant had made false statements during the confrontation, which must have been the result of her being drugged. She further stated that the second applicant had not committed the murder and that her behaviour, including her confession and accusations, was strange.

20. The third applicant alleges that following this interview she was subjected to beatings by the Gegharkunik Regional Deputy Prosecutor F.B. and two other officers of the prosecutor's office who pulled her hair and then threw her on the floor and started kicking her. On 11 July 2004 the police officers took her home, where she lay in bed motionless for several days until her uncle visited her on 13 July 2004 and made arrangements to have her transferred to Yerevan for a medical examination.

21. On 12 July 2004 the first and second applicants were formally charged with murder.

22. On the same date the Gegharkunik Regional Court held a hearing in the first and second applicants' presence, at which it examined and granted the application seeking to have them detained. Deputy Regional Prosecutor F.B. was present at this hearing. The second applicant was asked by the judge whether she had confessed voluntarily to the murder or had been coerced to do so, to which she replied that no coercion or intimidation had been applied to her during the preliminary investigation and that the confession had been made voluntarily.

23. On 14 July 2004 the second applicant was transferred from the Vardenis Police Department to the Avobyan detention facility. Upon her admission to the detention facility the second applicant underwent a medical examination and was found to have "bruised feet due to blood vessels being broken as a result of swelling". It was further recorded that she complained of high blood pressure, pain in the legs and swollen feet.

24. On the same date the first applicant was transferred to the Kosh detention facility.

25. On 16 July 2004 the third applicant underwent a medical examination at the Armenia Medical Centre in Yerevan and was found to have:

> "Concussion (?), bruising of soft tissues of the head [...], and bruising of soft tissues in the back area and of the left arm..."

26. On 23 August 2004 the criminal proceedings in their part concerning the third applicant were terminated for lack of evidence of her involvement in the crime.

27. On 25 August 2004 the first and second applicants requested that a state-appointed lawyer, K., be engaged in the case. The applicants allege that on the same date lawyer K. requested that the first and second applicants be questioned in his presence, but this request was refused.

28. On 26 August 2004 the investigation was completed and the first and second applicants were granted access to the case file. On the same date both applicants and their lawyer familiarised themselves with the materials of the case, which consisted of four volumes.

B. The court proceedings

29. On 31 August 2004 the Gegharkunik Regional Prosecutor approved the indictment and the case was transmitted to the Gegharkunik Regional Court for examination on the merits. In the proceedings before the Regional Court the first and second applicants denied their guilt and stated that their confession statements had been made as a result of ill-treatment.

30. The first and second applicants allege that the hearings at the Regional Court were conducted in an atmosphere of constant disorder, including real threats and verbal and physical abuse towards them and their lawyer by a group of 25 to 30 people, composed of the victim's relatives and their friends.

31. In November 2004 lawyer S. of the Helsinki Association NGO was engaged in the case by the first and second applicants, replacing lawyer K. According to the applicants, the hearings continued in the same manner.

32. On 21 January 2005 the President of the Gegharkunik Regional Court informed the head of the bar association in writing that lawyer S. had failed to appear at the hearing of 19 January 2005 without prior notice. The hearing was therefore adjourned until 25 January 2005. Lawyer S. was notified of this but informed the court by telephone that she refused to participate. The President requested in his letter that measures be taken to ensure her participation or else the court would have to continue the proceedings without her.

33. On 25 January 2005 lawyer S. applied to the Minister of Justice, complaining about the disorder during the court hearings. She alleged that the applicants' previous lawyer, K., had been beaten by the victim's relatives, which precluded his further participation in the case, and that she feared the same would happen to her. She further alleged that the court took no action to prevent the disorder and requested that the case be examined in a different court.

34. The first and second applicants allege that lawyer S. was forced to miss some of the hearings because of fears for her safety.

35. On 4 February 2005 the Regional Court found the first and second applicants guilty of murder and sentenced them to nine and fourteen years' imprisonment respectively. In doing so, the Regional Court examined and dismissed the first and second applicants' allegations of ill-treatment on the following grounds:

(a) these allegations had been examined by the Gegharkunik Regional Prosecutor's Office and had been found to be unsubstantiated (see paragraph 60 below);

(b) the first and second applicants, at various stages of the proceedings, had made contradictory statements in connection with these allegations;

(c) the second applicant, having indicated the alleged perpetrators, nevertheless refused to have a confrontation with them during the court proceedings;

(d) on 10 July 2004 the second applicant had participated in an investigative measure at the scene of the crime which was recorded on film and was examined in court: she walked freely and bore no signs of ill-treatment;

(e) the first and second applicants admitted their guilt and made no allegations of ill-treatment at the court hearing of 12 July 2004, at which the question of their detention was determined (see paragraph 22 above);

(f) on 13 July 2004 the first and second applicants were filmed for a police television show but made no allegations of ill-treatment to the members of the crew;

(g) when questioned on 14 July 2004 the second applicant refused to comment on the complaints which she had lodged with various authorities prior to her arrest, stating that those had been lodged before her arrest and that the true statements were those which she had made after her arrest;

(h) on 14 July 2004 the first and second applicants were transferred to detention facilities and no signs of ill-treatment were recorded at the time of their admission;

(i) the second applicant raised the allegations of ill-treatment for the first time only on 21 August 2004, more than forty days after her arrest;

(j) the second applicant's allegations of ill-treatment had been rebutted by the statements made in court by the officer of the criminal investigation unit of the Vardenis Police Department, K.M., who had been questioned as a witness.

36. On 18 February 2005 lawyer S. lodged an appeal. In her appeal she argued that the applicants had been deprived of effective legal assistance because from 14 December 2004 she had not been able to participate in the hearings because of the constant disorder in the courtroom. She further argued that the applicants' conviction had been based on coerced confession statements. It appears that the applicants also lodged appeals in which they, *inter alia*, denied their guilt and stated that their confession statements had been made as a result of ill-treatment.

37. On 22 March 2005 the examination of the case commenced at the Criminal and Military Court of Appeal. According to the first and second applicants, the hearings before the Court of Appeal were conducted in the same manner as before the Regional Court.

38. At the hearing on 22 June 2005 a scuffle broke out between the victim's and the applicants' relatives. It appears that the victim's relatives were removed from the courtroom and the hearing resumed. The hearing was then adjourned until 27 June 2005 in order for lawyer S. to have time to prepare her final pleading.

39. On 24 June 2005 the head of the Helsinki Association submitted the text of lawyer S.'s final pleading to the Court of Appeal by post, claiming that this was necessary in order to ensure the lawyer's personal and physical safety. He alleged that at the hearing of 22 June 2005 the victim's relatives had attacked the lawyer. Some of the defendants' relatives had also been attacked and beaten. He further alleged that during the hearings in both the Regional Court and the Court of Appeal there had been constant threats against the lawyer, but her requests to have her security ensured and the threats recorded in the transcripts had been ignored by the courts.

40. On 27 June 2005 the hearing was adjourned until 1 July 2005 because of lawyer S.'s absence. In doing so, the Court of Appeal noted the lawyer's concerns about her security and refusal to participate because of fears for her safety.

41. On the same date the presiding judge addressed a letter to the head of the bar association, with a copy to lawyer S., stating that the hearing had been adjourned and asking that her future appearance be ensured. The letter further stated that appropriate measures had been taken to ensure the safety of the participants in the trial.

42. On 29 June 2005 lawyer S. complained to the police about the events of 22 June 2005, alleging that she had been working in such conditions for the last six to seven months and that she was not able to attend the hearing of 27 June 2005 because of fears for her safety.

43. On 1 July 2005 the Court of Appeal held a hearing. Lawyer S. did not appear. According to the record of the hearing, the court noted lawyer S.'s absence and stated that both the lawyer and the bar association had been informed that the court had taken all possible measures to secure the safety of those participating in the trial and had therefore been asked to ensure the lawyer's presence. The second applicant stated that she had met with lawyer S. at the detention centre and they had agreed that the lawyer would not appear in court. She therefore wished to dispense with the lawyer's services and did not wish to have another lawyer. The first applicant similarly stated that he wished the proceedings to continue without the lawyer and that he did not wish to have another lawyer. The court then decided to return lawyer S.'s final pleading on the ground that she no longer represented the first and second applicants.

44. The applicants allege that the record of the court hearing of 1 July 2005 contains inaccurate statements and does not correspond to reality. Their lawyer was refused, at a later stage, a copy of this record because she

was allegedly no longer authorised to represent them and was therefore unable to comment on its accuracy.

45. On 2 July 2005 the Court of Appeal upheld the first and second applicants' conviction. The Court of Appeal dismissed their allegations of ill-treatment on the same grounds as the Regional Court adding also that, according to a court-ordered expert medical opinion, the first applicant bore no signs of injury.

46. On 8 July 2005 lawyer S. visited the second applicant at the detention facility.

47. On 11 July 2005 lawyer S. lodged an appeal on points of law with the Court of Cassation. In her appeal she argued that the applicants had been ill-treated and their conviction was based on coerced statements. She further argued that the applicants had been deprived of effective legal assistance and an objective examination of their case, because of an atmosphere of constant terror reigning in the courtroom. The Court of Appeal had failed to ensure order and it had been impossible to examine evidence and to submit new evidence in an objective and fair manner because of the repeated scuffles and stressful atmosphere. The conflicts, threats of violence, verbal abuse and scuffles had worsened during the last three hearings in the Court of Appeal. The court, however, had failed to take any measures, which precluded her further participation and even made it impossible to make her final pleading which, as a result, she had been forced to submit by post. The court's inactivity only encouraged further aggressive behaviour by the victim's relatives. The applicants' previous lawyer K. had also been unable to participate in the hearings, which had consequently been held in October 2004 in his absence.

48. On an unspecified date the second applicant also lodged an appeal on points of law. It appears that in her appeal she argued that she had confessed to the crime as a result of beatings, torture and threats. She further complained that the hearings before the Court of Appeal had been held without a lawyer.

49. On 14 July 2005 lawyer S. received a letter from the presiding judge dated 1 July 2005 informing her that the first and second applicants had dispensed with her services because of her failure to appear at the hearings of 27 June and 1 July 2005 and returning the text of her final pleading.

50. On 8 August 2005 lawyer S. lodged a supplement to her appeal of 11 July 2005, expressing surprise about the fact that the text of her final pleading had been returned to her and about the grounds on which it had been returned. She alleged that these actions pursued the aim of concealing the violation of the first and second applicants' right to defence and the failure to ensure order during the court hearings. She requested that the text of her final pleading be included in the case file. She further requested that protective measures be taken at the hearing before the Court of Cassation in order for her to be able to participate, taking into account the manner in

which the hearings had been conducted before the courts of first and second instance.

51. On 12 August 2005 the Court of Cassation dismissed the second applicant's appeal. As regards the allegations of ill-treatment, the Court of Cassation stated that these had been thoroughly examined by the Regional Court and the Court of Appeal and had been rightly found to be unsubstantiated. As regards the alleged absence of a lawyer, the court considered these allegations to be ill-founded, finding on the basis of the materials of the case file that the lawyer had been involved in the examination of the case at the Court of Appeal from day one, namely 22 March 2005. As it appeared from the record of the hearing of 1 July 2005, the second applicant later dispensed with the lawyer's services because of the latter's failure to appear at the hearings of 27 June and 1 July 2005. Taking this into account, as well as the fact that the second applicant did not wish to have another lawyer, the Court of Appeal accepted this and informed the lawyer in a letter.

52. As to lawyer S.'s appeal, the Court of Cassation left this appeal unexamined on the ground that the first and second applicants had dispensed with her services and she was no longer authorised to bring an appeal on their behalf pursuant to Section 403 (3) of the Code of Criminal Procedure.

C. Complaints of ill-treatment and their examination outside the criminal proceedings against the first and second applicants

53. On 21 July 2004 the third applicant lodged a complaint with the Armenian Ombudsman. She stated, *inter alia*, that on 10 July 2004 she had been roughly pushed into a car and taken by Assistant Prosecutor Va.H. and another law enforcement official to Chief Vi.H.'s office. There Va.H. had started to force her to smoke a cigarette, while continually hitting her on the head with his hand and a bottle, saying that it was she who had committed the murder. When she disagreed, they had proceeded to beat her. At that moment Deputy Regional Prosecutor F.B. had entered the office and slapped her with such force that her teeth hurt. One of the officers said "Bend down, bitch" and pushed her to the floor, then F.B., Va.H. and Investigator G.H. started kicking her like a ball. Va.H. ordered her to undress, saying that he had invited a doctor to check if she was still a virgin. When she refused, he pulled off her jacket. They wanted to undress her but she resisted. Then they brought in her mother and beat her, after which they told her to watch how they would murder her daughter, unless they agreed to confess. Then they let her go but only on the condition that she would not tell anyone that she had been beaten. The next morning she was again taken to the police department, where F.B. started hitting her arms and forcing her to write a confession. Then they brought her mother again and made them

sit facing each other. They started beating her mother and ordered her to persuade her daughter to confess. Her mother begged her to do so, adding that she would not recognise her father if she saw him, he was in such a bad state, and that it was not shameful to lie after all the ill-treatment they had endured. She decided to cooperate eventually because of her mother's pleas.

54. On 2 August 2004 the second applicant lodged a similar complaint with the General Prosecutor of Armenia. She stated, *inter alia*, that on 9 July 2004 she had been taken into custody at the Vardenis Police Department by the Chief of Department Vi.H. and Regional Prosecutor F.B. There she had been beaten by Vi.H. and five other police officers in connection with the murder. Her husband had been kept at the police department for about a month, where he had been beaten and his fingernails had been pulled in order to coerce him to confess, which he had refused to do. The same beating and violence had been inflicted on her and her daughter. For three days Chief of Police Department Vi.H. had beaten her and made her sit in water, after which she had agreed to write the confession dictated to her by Vardenis Investigator G.H. and Regional Prosecutor F.B. The second applicant added that she was prepared to repeat her allegations in court in the presence of the perpetrators.

55. On 10 August 2004 the Ombudsman forwarded the third applicant's complaint to the General Prosecutor, together with a copy of the medical opinion of the Armenia Medical Centre of 16 July 2004 (see paragraph 25 above).

56. The above complaints were forwarded by the General Prosecutor to the Gegharkunik Regional Prosecutor's Office for examination.

57. On 19, 25, 26 and 31 August 2004 the Senior Assistant to the Gegharkunik Regional Prosecutor, Y.I. (hereby Senior Assistant Y.I.), took statements from the following law enforcement officers in connection with the allegations of ill-treatment: Gegharkunik Regional Deputy Prosecutor F.B, Assistant to the Regional Prosecutor Va.H., Investigator of the Regional Prosecutor's Office G.H., Chief of the Vardenis Police Department Vi.H., Head of the Criminal Investigations Unit at the Vardenis Police Department S.M., two officers of that unit Y.M. and K.M., and chief of the temporary detention cell at the police department, V.A. They were asked to provide an account of the contested events. In reply to Y.I.'s request to comment on the second and third applicants' allegations of ill-treatment addressed to some of those questioned, they denied having inflicted any violence on the second and third applicants, claiming that the latter had made false statements.

58. On 30 August 2004 Senior Assistant Y.I. took a statement from the second applicant. She stated that on 9 July 2004 she had been taken by Vi.H. and F.B. to the police department where she had been kept for five days and beaten by Vi.H. and police officers S.M., Y.M., K.M. and V.A. with rubber batons. She had been threatened with a champagne bottle and

had been seated on what she believed to be an electric chair. They had demanded that she confess to the murder, otherwise the same would happen to her daughter, husband and other family members. She had then written a confession which was dictated to her. Furthermore, she had met her husband – who had already been in police custody for a month – at a confrontation. His fingernails had been pulled, he had lost weight, and his clothes were stained and torn. When she had asked him what had happened, he had started crying and said that for about a month he had been deprived of sleep and repeatedly beaten. In the meantime her daughter was being beaten in a nearby office. She had not mentioned any of this to the judge at the detention hearing because she had been beaten and for fear that the ill-treatment would continue.

59. On the same date the chief of Abovyan detention facility and the head of its medical unit – apparently upon the inquiry of the Regional Prosecutor's Office – issued a certificate containing the results of the second applicant's medical examination of 14 July 2004 (see paragraph 23 above).

60. On 31 August 2004 Senior Assistant Y.I. decided to refuse the institution of criminal proceedings on the basis of the second and third applicants' complaints. This decision stated that:

> "[The second and third applicants' complaints of 21 July and 2 August 2004 addressed to the Ombudsman and the General Prosecutor's Office] have been transferred by the General Prosecutor's Office to the Gegharkunik Regional Prosecutor's Office for examination...
>
> The Regional Prosecutor's Office has examined the above complaints, has verified in detail the presented facts, and has taken statements from the employees of the Regional Prosecutor's Office and Vardenis Police Department mentioned in those complaints and involved in the criminal case.
>
> The allegations raised in [the second and third applicants' complaints] concerning having been beaten or subjected to any other kind of violence have been rebutted.
>
> The circumstances have been confirmed by the statements of Regional Deputy Prosecutor [F.B.], Assistant Prosecutor [Va.H.], Investigator of the Prosecutor's Office [G.H.], Chief of the Vardenis Police Department [Vi.H.], Head of the Criminal Investigations Unit at the said department [S.M.], two operatives of the said unit, [Y.M. and K.M.], and chief of the [temporary detention cell at the police department V.A.]; the certificate of 30 August 2004 of the Abovyan detention facility, according to which [the second applicant] on the date of her admission at [the Abovyan detention facility] (14 July 2004) was examined by a doctor and complained of high blood pressure, pain in her legs and swollen feet. The bruises on [the second applicant's feet] resulted from swellings which were caused by broken blood vessels.
>
> [The first applicant] has not submitted any complaints concerning having been beaten or subjected to any other kind of violence."

61. The applicants were not informed about this decision.

62. On 8 December 2004 the chief of the Abovyan detention facility and the head of its medical unit addressed a letter to lawyer S., stating that during the medical examination carried out at the time of the second

applicant's admission to the detention facility, namely on 14 July 2004, the second applicant had complained of pain in the legs and swollen feet. The second applicant had been found to have swollen and bruised feet.

63. On 12 December 2004 lawyer S. applied to the General Prosecutor with a request to have criminal proceedings instituted. The lawyer alleged that all three applicants had been ill-treated and coerced to confess at the Vardenis Police Department in June and July 2004. She stated that the perpetrators had been pointed out by the applicants. The lawyer referred to the results of the medical examinations carried out in respect of the second applicant at the Abovyan detention facility on 14 July 2004 and in respect of the third applicant at the Armenia Medical Centre on 16 July 2004.

64. It appears that on 23 December 2004 the General Prosecutor's Office sent a letter to lawyer S., informing her that the first and second applicants had not been ill-treated by the employees of the Gegharkunik Regional Prosecutor's Office and the Police Department.

65. On 25 January 2005 lawyer S. re-applied to the General Prosecutor with the same request, claiming that no reply had been received to her previous request of 12 December 2004.

66. On 31 January 2005 the General Prosecutor's Office sent a letter to lawyer S. with identical content.

67. On an unspecified date lawyer S. contested the actions of the General Prosecutor's Office, including the two above-mentioned letters, before the courts on behalf of all three applicants. The lawyer complained about the ill-treatment that had been inflicted on the applicants in the period between 8 and 12 July 2004, and indicated the names of the perpetrators, including the Chief of the Vardenis Police Department, Vi.H. and the police officers of that department, Y.M., K.M. and V.A. She alleged that the Regional Prosecutor and the investigative team headed by him were aware of these acts but showed indifference and even facilitated the coercion to obtain prosecution evidence.

68. On 25 March 2005 the Kentron and Nork-Marash District Court of Yerevan left the lawyer's appeal without examination. The District Court found that a decision had been adopted on 31 August 2004 whereby the institution of criminal proceedings had been refused. According to the prescribed procedure, this decision could be contested before a higher prosecutor or the court of appeal.

69. On 28 March 2005 the third applicant lodged an appeal against this decision. She alleged, *inter alia*, that she and the other two applicants had been subjected to continual ill-treatment in June and July 2004. She herself had been kept at the Vardenis Police Department on the night from 9 to 10 July 2004 and beaten by the employees of the Gegharkunik Regional Prosecutor's Office, F.B., Va.H., G.H. and G.H. The Regional Prosecutor, A.M., and Chief of Police Department Vi.H. had been aware of this. She had injuries on her head, face and back and had to stay in bed for several

days. Only after her uncle came to visit her upon his return from Russia could she be transferred to Yerevan for a medical examination. The third applicant further stated that she had noticed signs of ill-treatment on her mother, such as bruised hands, swollen face and difficulty walking, during the confrontation which had been held between them.

70. On the same date lawyer S. lodged an appeal with the Criminal and Military Court of Appeal against the decision of 31 August 2004 on behalf of the first and second applicants. In her appeal she argued, *inter alia*, that neither she nor the applicants had ever been informed about this decision and they had become aware of it only at the hearing before the District Court on 25 March 2005. As regards the substance of this decision, it was adopted by persons who had an interest in the outcome of the case and was based on statements of the alleged perpetrators which lacked credibility. The applicants, however, had never been questioned in connection with their allegations. The lawyer further referred to the numerous complaints lodged by the second and third applicants from June to August 2004 and the results of their medical examinations of 14 and 16 July 2004.

71. On 11 May 2005 the Criminal and Military Court of Appeal examined jointly both issues and decided to dismiss the appeal against the decision of 25 March 2005 and not to examine the appeal against the decision of 31 August 2004 on the ground that it had been lodged outside the one month time-limit for appeal.

72. On 25 May 2005 lawyer S. lodged an appeal against this decision on behalf of the applicants.

73. On 22 July 2005 the Court of Cassation quashed this decision and remitted the case for a new examination on the ground that the Court of Appeal had failed to clarify whether the decision of 31 August 2004 had been duly and timely served on the applicants.

74. On 7 September 2005 the Court of Appeal decided to quash the decision of 25 March 2005 and to reserve a right to the defence to contest the decision of 31 August 2004, since there was no evidence to show that a copy of that decision had been duly served on the applicants prior to their becoming aware of it in March 2005.

75. On 23 September 2005 lawyer S. lodged an appeal with the Court of Appeal against the decision of 31 August 2004 on behalf of the applicants.

76. On 10 November 2005 the Court of Appeal decided to dismiss the appeal. In doing so, the court first confirmed the findings made in that decision and then added that the complaints about ill-treatment had already been examined and dismissed by the Court of Appeal and the Court of Cassation in the course of the criminal proceedings against the first and second applicants.

II. RELEVANT DOMESTIC LAW

The Code of Criminal Procedure (as in force at the material time)

1. Ill-treatment and institution of criminal proceedings

77. For a summary of the relevant provisions see the judgment in the case of *Virabyan v. Armenia* (no. 40094/05, §§ 101-114, 2 October 2012).

2. Right to a lawyer

78. Sections 63 and 64 provide that the suspect and the accused have the right to defence counsel and to be questioned in his presence. The suspect enjoys this right from the moment when he is presented with the investigating authority's decision on arrest, the record of arrest or the decision on choosing a preventive measure, while the accused enjoys it from the moment when the charge is brought.

79. According to Section 69, defence counsel's participation in the criminal proceedings is compulsory if, *inter alia*, the suspect or the accused has expressed such a wish. Defence counsel's compulsory participation in the criminal proceedings is to be secured by the authority dealing with the criminal case.

80. Section 72 provides that refusal of a lawyer by the suspect or the accused means his intention is to conduct his defence without the assistance of a lawyer. The suspect's or the accused's statement refusing a lawyer is to be entered into a record.

3. Protective measures

81. Sections 98 provides that if the authority dealing with the case discovers that, *inter alia*, the accused or the defence lawyer is in need of protection from any criminal encroachment, it shall take protective measures upon the victim's request or of its own motion by adopting an appropriate decision. Such measures are compulsory if the victim or his next of kin has received physical threats or threats against his property or if physical violence has been inflicted in connection with his participation in the trial. The victim's request for protective measures shall be examined by the authority dealing with the case immediately and at the latest within 24 hours. The victim shall be immediately informed about the decision and served a copy.

82. According to Section 99, protective measures include, *inter alia*, a warning by the court or the prosecutor of possible criminal prosecution of the person who has made violent or other criminal threats, and measures ensuring the safety of the victim. The person to whom a warning is to be issued shall be summoned by the prosecutor, the investigator or the body of

inquiry. Measures ensuring the safety of the victim include, *inter alia*, taking the victim or his next of kin under personal protection.

4. Right to appeal against a judgment of the Court of Appeal

83. According to Section 403 (3), an appeal against a judgment of the Court of Appeal can be lodged by the convicted, the acquitted, their lawyers and lawful representatives, the prosecutor, the victim and his representative.

THE LAW

I. JOINDER OF THE APPLICATIONS

84. Given their common factual and legal background, the Court decides to join the applications pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

85. The applicants complained that they had been subjected to ill-treatment while in custody in June and July 2004 and that the authorities had failed to carry out an effective investigation into their allegations of ill-treatment. They 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

86. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The alleged ill-treatment

(a) The parties' submissions

(i) The Government

87. The Government contested the applicants' allegations of ill-treatment, claiming that they had failed to produce proper evidence.

88. As regards the first applicant, no injuries were recorded following the medical examination carried out upon his admission to the Kosh detention facility on 14 July 2004. Furthermore, he had made contradictory statements at various stages of the proceedings and submitted on numerous occasions that he had not been ill-treated.

89. As regards the second applicant, according to the medical examination of 14 July 2004 the blood vessels on her feet had broken as a result of swelling. Given that she was also suffering from high blood pressure, this was the cause of the swelling. Furthermore, on the video recording of 10 July 2004 – examined by the Regional Court – no bodily injuries could be seen on the second applicant who walked freely and bore no signs of ill-treatment. Lastly, at the court hearing of 12 July 2004 she denied having been coerced to give evidence.

90. As regards the third applicant, the medical conclusion of the Armenia Medical Centre was not proper evidence, since it did not contain any note on the nature and causes of the recorded injuries, which could have been any number of things. Furthermore, she visited the Medical Centre only a week after her last appearance at the police station and she did not lodge any complaints in the meantime. The fact that she did not confess or testify at that appearance also confirmed that there had been no ill-treatment.

91. Lastly, the applicants' allegations of ill-treatment had been examined by the Regional Prosecutor's Office and the courts and had been found to be unsubstantiated.

(ii) The applicants

92. The applicants disputed the Government's claim that they had failed to produce evidence of ill-treatment. Such evidence had become available at the time of the second applicant's admission to the Abovyan detention facility. The Government had tried to link erroneously the recorded injuries to high blood pressure, despite the fact that there was evidence in the case file proving that she had never had health problems. In reality the swelling was the result of the violence which she had endured at the police department, namely blows to the soles of her feet with rubber batons, and which she had described on numerous occasions, including during the court proceedings.

93. As regards the absence of any complaints by the third applicant between 10 and 16 July 2004, it should be taken into account that she was a minor at the material time, with her parents still in detention. It was the Government's positive obligation to take care of her as a minor and to protect her from ill-treatment.

94. As regards the video recording examined in court, the Government had failed to mention the fact that during the same court hearing the applicants had objected and insisted that both of them were moving with

difficulty on the recording and that injuries were visible on their bodies, but the court was not objective and was indifferent. Moreover, it was the same court which had earlier imposed an unlawful and trumped up "administrative detention" penalty on the first applicant, thereby allowing an additional 15 days in detention for the police officers to continue coercing a confession. The same court, during the hearing on detention of 12 July 2004, had noticed their injuries and failed to inquire about them. The applicants were afraid to raise this issue because the police officers were present at the hearing.

(b) The Court's assessment

(i) General principles

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

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

97. In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25; *Labita*, cited

above, § 121; and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

98. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 183, ECHR 2009). Similarly, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among other authorities, *Aksoy v. Turkey*, 18 December 1996, § 61, Reports 1996-VI; *Selmouni*, cited above, § 87; and *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010-...). Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under Article 3 of the Convention (see *Mikheyev v. Russia*, no. 77617/01, § 127, 26 January 2006).

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

99. The Court observes from the outset that, contrary to the Government's claim, both the second and third applicants produced evidence certifying that they had bodily injuries at the material time.

100. In particular, immediately upon her transfer from Vardenis Police Department to the Abovyan detention facility, the second applicant was examined by a doctor and was found to have bruised feet. The Government claimed that the bruises in question resulted from swelling but failed to explain how the second applicant had acquired such swelling in the first place, especially such serious swelling which led to broken blood vessels and bruising. Their argument that the swelling was caused by the second applicant's high blood pressure is not supported by any medical or other evidence and therefore cannot be accepted as a medically accurate or plausible explanation for such injuries. Thus, it follows that the second applicant was released from the Vardenis Police Department with apparently quite serious injuries to her feet, for which the Government failed to provide any plausible explanation. Nothing suggests that she had such injuries prior to her admission to the police department.

101. The Court further notes that the video recording of an investigative measure conducted on 10 July 2004 with the second applicant's participation, which was moreover not presented to the Court, cannot be viewed as sufficient evidence in itself to suggest that no ill-treatment had been inflicted on the second applicant while in custody, especially since the

injuries sustained by her were on her feet and could not have been visible on the video.

102. As regards the statement made by the second applicant during the detention hearing of 12 July 2004 (see paragraph 22 above), the Court notes that the fact that a victim of alleged ill-treatment did not raise any complaints in the immediate aftermath – or, as in the present case, denied having been ill-treated – cannot in itself serve as sufficient proof that no ill-treatment had actually been inflicted. It is common knowledge that statements made by a victim of ill-treatment in the immediate aftermath may be seriously affected by the stress, trauma and fears that a person may experience as a result of such ill-treatment, especially when such persons continue to remain in custody (see, *mutatis mutandis*, *Harutyunyan v. Armenia*, no. 36549/03, § 65, ECHR 2007-VIII). This is even more so in the second applicant's case in view of the fact that at least one of the alleged perpetrators of the ill-treatment, namely Deputy Regional Prosecutor F.B., was present at the hearing in question.

103. The Court therefore concludes that the second applicant had been subjected to ill-treatment at the Vardenis Police Department which undoubtedly attained the minimum level of severity required under Article 3 of the Convention.

104. As regards the third applicant, the Court notes from the outset that it is undisputed that the third applicant was at the Vardenis Police Department on 10 July 2004 for questioning. It further notes that there is no evidence to suggest that the third applicant was released from the police department without any injuries. However, various injuries were recorded on 16 July 2004 after she was taken to Yerevan by her uncle for a medical examination (see paragraph 25 above).

105. The Court does not accept the Government's argument that the lack of a confession on the third applicant's part can serve as proof of her not having been ill-treated by the law enforcement officials. Nor can the Court agree with the Government's claim that the medical conclusion of the Armenia Medical Centre is not proper evidence on the sole ground that it did not indicate the causes of the recorded injuries. Moreover, this document was presented at the material time to the prosecuting authorities, which did not contest its accuracy or veracity or disprove any possible link between those injuries and the third applicant's stay at the Vardenis Police Department, despite her relevant complaint (see paragraphs 121-130 below).

106. It is true that the third applicant visited the hospital only about five or six days after her release from the police department. However, the Court cannot overlook the fact that at the material time she was a minor whose parents, moreover, were both still in detention. The Court does not underestimate the extremely vulnerable condition that the third applicant must have been in at the material time and the fear and trauma that she must have suffered, which also explains the absence on her part of any steps to

lodge complaints in the immediate aftermath of her release. Therefore, and in view of the fact that the delay in question cannot be said to have been of an unreasonable duration in the particular circumstances of the case, the Court is reluctant to attribute any decisive importance to this delay which, in any event, cannot be considered so significant as to undermine the third applicant's case under Article 3 of the Convention (see, *mutatis mutandis*, *Balogh v. Hungary*, no. 47940/99, § 49, 20 July 2004).

107. The Court further draws attention to the fact that the third applicant's allegations of ill-treatment both at the domestic level and before the Court appear to be compatible with the description of her injuries contained in the medical report and consistent throughout the proceedings.

108. Lastly, the Court is mindful of its finding above that the second applicant, that is the third applicant's mother, had been ill-treated while in custody around the same period, allegedly by the same perpetrators and while being investigated in connection with the same criminal case. This finding speaks strongly in favour of the third applicant's allegation of ill-treatment.

109. In view of all the above factors and on the basis of all the material before it, the Court concludes that the Government have not satisfactorily established that the third applicant's injuries were caused otherwise than by the treatment meted out to her at the police department, which was sufficiently serious to fall within the scope of Article 3 of the Convention.

110. Having regard to the particularities of the treatment inflicted on the second and third applicants, the apparent intentions of the police officers to obtain confessions by inflicting such treatment, the fact that the second and third applicants were mother and daughter and would each therefore be likely to suffer intensely from the pain inflicted on the other, and taking also into consideration that the third applicant was only a minor, the Court considers that the treatment in question could be qualified as torture within the meaning of Article 3 of the Convention.

111. As regards the first applicant, there is no medical evidence in the case file that would enable the Court to conclude that he had been subjected to treatment incompatible with the requirements of Article 3 of the Convention.

112. There has accordingly been a violation of Article 3 of the Convention in its substantive limb in respect of the second and third applicants but no such violation in respect of the first applicant.

2. The alleged inadequacy of the investigation

(a) The parties' submissions

(i) The Government

113. The Government argued that the authorities had complied with their positive obligation. In particular, the Gegharkunik Regional

Prosecutor's Office started an investigation on the basis of the complaints of 21 July and 2 August 2004 and a number of investigative measures were taken, such as taking statements from the second applicant, as well as the police officers of the Vardenis Police Department and the employees of the Regional Prosecutor's Office involved in the case.

114. In addition, the investigator sent an inquiry to the Abovyan detention facility in order to verify whether injuries had been detected at the time of admission and to obtain clarification from the doctor. A reply was received on 30 August, according to which the bruises on the second applicant's feet resulted from swelling. Thus, there was no ground to institute criminal proceedings in the light of all the evidence, and therefore the investigator rejected such request by his decision of 31 August 2004.

(ii) The applicants

115. The applicants stated that their complaints about ill-treatment and rape threats to the third applicant were transferred for examination by the same Regional Prosecutor's Office whose employees were implicated in those acts and had an interest in concealing them. Therefore, this was not an independent and objective authority.

116. The investigation was just a formality and no medical examinations were ordered to examine the injuries. Nevertheless, they reiterated their allegations of ill-treatment by the police officers and Deputy Regional Prosecutor F.B. at a meeting with the investigator. They further made detailed statements about their ill-treatment in the course of the court proceedings, indicating the names of police officers and prosecution employees. The refusal to institute criminal proceedings, however, made it impossible to carry out various investigative measures.

117. Furthermore, the domestic law required medical institutions to inform the law enforcement authorities when such injuries as those detected on the third applicant were disclosed. The relevant police department in Yerevan, however, did nothing.

(b) The Court's assessment

(i) General principles

118. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Assenov and Others*, cited above, § 102, and *Labita*, cited above, § 131).

119. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and, if justified, punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Mikheyev*, cited above, § 108, and *Virabyan v. Armenia*, no. 40094/05, § 162, 2 October 2012).

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

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

121. The Court notes from the outset that both the second and third applicants undoubtedly had an arguable claim before the domestic authorities regarding their allegations of ill-treatment. The situation, however, may be different as far as the first applicant is concerned, taking into account the finding of non-violation above, and therefore requires a more careful examination.

122. The Court points out in this respect that, while there is no medical evidence to prove that the first applicant had been subjected to ill-treatment, he was the husband and father of the second and third applicants and a suspect in the same criminal case. He was taken to the same police department as the other two applicants, around the same period, and was apparently questioned by the same law enforcement officials. All these facts were known to the investigating authority, including the allegations that he had been ill-treated, even if the latter were not raised directly by him but by the other two applicants and by his lawyer. Taking into account all of the

above, as well as the availability of sufficient medical evidence which led this Court to find a substantive violation of Article 3 of the Convention in respect of the second and third applicants, the Court considers, in the particular circumstances of the case, that the authorities were under the obligation to carry out an effective investigation also in respect of the first applicant.

123. Turning to the question of the adequacy of the investigation, the Court notes from the outset that the only inquiry carried out was that by the Gegharkunik Regional Prosecutor's Office in August 2004. Considering that the authorities were called upon to investigate the actions of employees of the same prosecutor's office and their subordinates at the local police department, the Court cannot consider such an investigation to satisfy the requirement of independence and impartiality. It is noteworthy that at no point did the investigating authority provide any explanation as to why it considered the testimony of the police officers credible, and that of the applicants unreliable, despite the strong medical evidence in their favour. The decision refusing the institution of criminal proceedings made generalised conclusions lacking any reasoning (see paragraph 60 above). It therefore appears that the investigating authority, without any justification, gave preference to the evidence provided by the police officers and, in doing so, can be said to have lacked the requisite objectivity and independence.

124. The Court cannot overlook a number of other significant omissions capable of further undermining the effectiveness of the investigation undertaken and the reliability of its findings.

125. As regards medical evidence, the Court notes that the investigating authority readily accepted the explanation that bruises on the second applicant's feet had been caused by swelling without even trying to clarify how she had developed this swelling in the first place. No additional medical examinations were ordered nor were the doctors, who had provided those conclusions, or any other medical experts, questioned in this connection. In the case of the third applicant, the investigating authority did not even examine the available medical evidence, such as the findings of the Armenia Medical Centre of 16 July 2004. It therefore appears that no account was taken of this obviously important evidence at any stage of the investigation. Similarly, the relevant doctors were not questioned and no additional medical examinations were ordered in this connection. Lastly, no medical examinations were ever ordered in respect of the first applicant. This was even more critical in his case, in view of the fact that no other medical evidence concerning him was available.

126. The Court further notes that neither the first nor the third applicants were ever questioned in connection with the allegations of ill-treatment. It further appears that no attempts were made to identify and question any other possible witnesses and no confrontations were held between the

applicants and the alleged perpetrators. As regards the questioning that did take place, the Court observes that on several such occasions those interviewed were simply asked to provide their account of events and no questions whatsoever were put to them. Even on those few occasions when the investigator did ask questions, there was never more than one question of a standard nature and lacking specificity (see paragraph 57 above). These interviews therefore appear to have been a pure formality and the Court cannot regard them as a serious attempt to establish the circumstances in which the applicants suffered or may have suffered ill-treatment.

127. In view of the foregoing, the Court cannot but conclude that the authorities failed to secure a proper and objective collection and assessment of medical and other evidence vital for the effective outcome of the investigation.

128. The Court lastly notes the futility of the applicants' attempts to have their allegations of ill-treatment re-examined before higher instances. Their repeated requests that their allegations be thoroughly investigated and the perpetrators be prosecuted and punished, addressed to the General Prosecutor's Office, appear to have received only perfunctory responses (see paragraphs 64 and 66 above), while the domestic courts, in rejecting their allegations of ill-treatment, made obviously inaccurate findings. In particular, the courts inaccurately stated that no signs of ill-treatment had been recorded on the second applicant at the time of her admission to the Abovyan detention facility and that she had lodged her first complaint of ill-treatment only forty days after her arrest, namely on 21 August 2004 (see paragraph 35 above). It therefore appears that the courts also failed to carry out a diligent and thorough examination.

129. In the light of the above, the Court concludes that the investigation into the applicants' allegations of ill-treatment undertaken by the authorities was ineffective and inadequate.

130. Accordingly, there has been a procedural violation of Article 3 of the Convention in respect of all three applicants.

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

131. The first and second applicants complained under Article 6 of the Convention that they had been deprived of effective legal assistance. In particular, their request to be questioned in the presence of their lawyer on 26 August 2004 was rejected, while the atmosphere in the courtroom throughout the proceedings prevented their lawyers from performing their functions effectively. The first applicant further complained that he had been unlawfully denied access to the Court of Cassation. The Court considers that these complaints fall to be examined under Article 6 §§ 1 and 3 (c) of the Convention, which, in so far as relevant, reads as follows:

"1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing...

3. Everyone charged with a criminal offence has the following minimum rights: ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interest of justice so require[.]"

A. Admissibility

132. The Government claimed that the refusal of the application to be questioned in the presence of the lawyer filed on 25 August 2004 was subject to appeal, but no such appeal was lodged. The domestic remedies were, therefore, not exhausted in that respect. As regards the first applicant, he personally failed to lodge an appeal against the judgment of the Court of Appeal of 2 July 2005, while lawyer S.'s appeal lodged on his behalf against that judgment was not examined because she was no longer authorised to represent him. He had therefore failed to exhaust the domestic remedies in respect of his complaints under Article 6.

133. The first and second applicants argued that the fact that they had not appealed against this or that refusal did not mean that they agreed with it, but was simply the result of their limited legal awareness and the fact that they did not have a lawyer during certain periods. They should have been provided with a lawyer regardless of their wish, as this was compulsory under the domestic law because the first applicant was disabled, the second was mentally underdeveloped and the third was a minor.

134. As regards the Government's first claim, the Court notes that the first and second applicants indeed failed to raise the issue of the refusal of questioning in the presence of their lawyer in their appeals to the courts. This part of the application is therefore inadmissible for failure to exhaust the domestic remedies. As regards the alleged failure of the first applicant to lodge an appeal with the Court of Cassation, the Court considers that this issue is closely linked to the substance of the first applicant's complaints and must therefore be joined to the merits.

135. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

136. The Government claimed, as regards safety in the courtroom, that the courts had ensured the necessary safety and taken all the measures prescribed by law. However, the lawyer herself systematically failed to appear, without giving prior notice. For example, on 21 January 2005 the presiding judge asked the bar association to take measures because of the lawyer's absence. The lawyer then refused to participate in the hearing of 25 January 2005. On 27 June 2005 the Court of Appeal informed the lawyer that appropriate security measures had been taken, but she still failed to appear. As a result, the applicants dispensed with her services and she was informed about this by a letter of 1 July 2005. Lastly, Section 98 of the Code of Criminal Procedure (CCP), which dealt with questions of protective measures, was not applicable to the case contrary to the applicants' claim, because it required a written request by the victim, while lawyer S. had never filed such a request.

137. The Government further argued, as regards the first applicant's access to the Court of Cassation, that he did not lodge an appeal with the Court of Cassation himself or through a lawyer. Lawyer S.'s appeal was not examined because she was no longer authorised to represent the first applicant. If he had reinstated her in the meantime, she should have informed the Court of Cassation. The Government drew attention to the fact that the second applicant had lodged an appeal with the Court of Cassation herself. This proved that she was consistent in her decision to dispense with lawyer S. The first applicant, however, did not avail himself of that possibility.

(b) The applicants

138. The first and second applicants argued that the Government's claim that safety had been ensured in the courtroom did not correspond to reality. To the contrary, threats and violence against the lawyers had happened with the court's acquiescence. The courts' assurances about ensuring security in the courtroom were just a hollow statement. Furthermore, Section 98 of the CCP required that complaints about safety be examined immediately and at the latest within 24 hours. A decision had to be taken and a copy served on the person concerned. However, no such decisions were taken by the Regional Court or the Court of Appeal and no specific protective measures were taken. Thus, no guarantees of security were given to the lawyer, which is why she was not able to appear. As a result, the first and second applicants were deprived of effective legal assistance.

139. The first applicant claimed that his right of access to court had been violated because the Court of Cassation had refused to admit lawyer S.'s appeal for formal reasons, even though on the merits it was admissible.

2. The Court's assessment

140. The Court reiterates that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II).

141. In the present case, the first and second applicants alleged that this right had been violated because of the failure of the authorities to ensure security in the courtroom, which prevented their lawyers from performing their functions effectively. The Court notes at the outset that the Government did not dispute the first and second applicants' description of the atmosphere in which the hearings were held, but alleged that appropriate measures had been taken to ensure the lawyers' safety and therefore lawyer S.'s failure to appear was unjustified.

142. The Court, however, is not convinced by the Government's argument. It notes that neither the Government nor the domestic courts ever indicated any specific measures that were allegedly taken to ensure security in the courtroom. Nor is there any other evidence in the case file to suggest that any of the protective measures specified in Section 98 of the CCP were ever taken. The assurances made by the Court of Appeal in its letter of 27 June 2005 lacked any details (see paragraph 41 above). The Court further notes that the Government's argument that Section 98 of the CCP required a written request by the victim appears to be in direct contradiction with the text of that provision, which allowed the authorities to take protective measures of their own motion. Furthermore, it cannot be said that the courts were not aware of the problem, given that the security issues arose in the courtroom. They were therefore in a position to take protective measures under Section 98 of the CCP in order to ensure the proper functioning of the proceedings, which they apparently failed to do. It remains, nevertheless, to be determined whether this violated the first and second applicants' rights under Article 6 of the Convention.

143. The Court notes that the hearings before both the Regional Court and the Court of Appeal were held apparently in an atmosphere of constant threats and verbal and physical abuse, addressed at the first and second applicants, their family members and lawyers. It appears that on several occasions scuffles broke out or the lawyers were physically assaulted. The situation appears to have been so bad that the lawyers had to miss hearings because of fears for their safety and a number of complaints were lodged, including one with the police. The Court has no doubt that such a situation in the courtroom must have adversely affected the lawyers' concentration and prevented them from adequately performing their functions. It must

have provoked feelings of fear and may have had an adverse effect on the lawyers' behaviour in the courtroom and overall work on the case. The Court lastly notes that this situation appears to have continued throughout the entire proceedings before the courts of the first and second instances which were called upon to determine, in a public hearing, questions of fact and law and to impose a sentence.

144. In the light of the above, the Court considers that the manner in which the court hearings were held in the first and second applicants' criminal case infringed the guarantees of Article 6 §§ 1 and 3 (c) of the Convention.

145. It remains to be determined whether the first applicant's right of access to court was respected. The Court reiterates in this respect that the right to a court, of which the right of access constitutes one aspect, is not absolute but may be subject to limitations in the form of regulation by the State. In this respect the State enjoys a certain margin of appreciation. Nevertheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Khalfaoui v. France*, no. 34791/97, § 35, ECHR 1999-IX, and *Papon v. France*, no. 54210/00, § 90, ECHR 2002-VII).

146. In the present case, the appeal on points of law lodged by lawyer S. on behalf of the first applicant was not admitted for examination by the Court of Cassation on the ground that she was no longer authorised to represent him. The Court considers that the rule requiring that appeals with courts be lodged by a duly authorised person does not in itself infringe the right of access to court. On the other hand, the Court cannot overlook the fact that the circumstances under which the first and second applicants dispensed with their lawyer's services are shrouded in ambiguity.

147. In particular, the applicants allege that the record of the court hearing of 1 July 2005 is false and that in reality they never dispensed with the services of lawyer S. While there is no objective way to verify this allegation, the Court does note, however, that lawyer S. visited the second applicant at the detention facility on 8 July 2005, apparently in the capacity of defence counsel, and lodged her appeal several days after (see paragraphs 46 and 47 above). The Court finds it very surprising that the second applicant, who had purportedly dispensed with the lawyer's services only days earlier, would meet with lawyer S. and, moreover, that this would lead to an appeal being filed by her. Furthermore, lawyer S. continued to represent the applicants in the parallel proceedings (see paragraph 75 above).

148. More importantly, assuming that the first and second applicants did indeed dispense with their lawyer at the hearing of 1 July 2005, the Court notes the conditions in which the first and second applicants took their decision to do so. In this connection, the Court reiterates that the waiver of a right guaranteed by the Convention – insofar as it is permissible – must be established in an unequivocal manner and must be attended by minimum safeguards commensurate with its importance (see, among other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II). The Court has already established that the court hearings throughout the entire proceedings, which lasted for about ten months, were held in an atmosphere of constant intimidation and verbal and physical abuse directed against both the applicants and their lawyers. The hearings preceding the hearing of 1 July 2005 were marked by particular violence, including an alleged physical assault on lawyer S., which resulted in her refusal to attend unless security was ensured in the courtroom. The Court has serious doubts that the decision to dispense with the lawyer taken in such circumstances can be considered truly voluntary and unequivocal and taken of the first and second applicants' free will, without any external influences.

149. The Court of Cassation was made aware of these circumstances by both the second applicant and lawyer S. in their appeals, but appears to have limited itself mostly to making a reference to the record of the court hearing of 1 July 2005 and failing to examine the alleged circumstances in detail. This resulted in the appeal filed by lawyer S. not being admitted on a formal ground without any examination of the allegations raised in that appeal. Those allegations, however, merited closer consideration, given the particular circumstances of the case. Thus, the Court of Cassation can be said to have acted with excessive formalism and lack of due diligence in refusing to admit the appeal filed by lawyer S. allegedly on the first applicant's behalf, which resulted in a disproportionate limitation on the first applicant's access to that court. Having reached this conclusion, the Court dismisses the Government's claim of non-exhaustion.

150. Accordingly, there has been a violation of Article 6 § 1, taken together with Article 6 § 3 (c) of the Convention, in that the first and second applicants were deprived of effective legal assistance, and a violation of Article 6 § 1 in that the first applicant was disproportionately denied access to court.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

151. The applicants further raised a number of complaints under Articles 1, 5 and 6 of the Convention.

152. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

153. 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

154. The applicants claimed 20,000 euros (EUR) in respect of pecuniary damage, including lost profit of the first and third applicants, and costs of parcels and transport on visits to prison. They further claimed EUR 300,000 in respect of non-pecuniary damage.

155. The Government argued that the pecuniary damage claimed was hypothetical and not supported by any evidence, while the amount of non-pecuniary damages was excessive.

156. 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, ruling on an equitable basis, it awards the first applicant EUR 10,000, the second applicant EUR 27,000 and the third applicant EUR 25,000 in respect of non-pecuniary damage.

B. Costs and expenses

157. The applicants also claimed EUR 100 for the costs and expenses incurred before the Court, namely postal expenses. They also asked the Court to fix a reasonable amount for the legal services provided to them by their lawyer since 2005.

158. The Government submitted that the applicants had failed to produce any evidence of the postal expenses. As regards the legal services, no award was to be made, since the lawyer had worked free of charge and the applicants had not incurred any costs in that respect.

159. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 100 for the postal expenses. As regards the legal costs, there is no evidence that the applicants are under the obligation to pay any

sum of money to the lawyer. In such circumstances, these costs cannot be claimed since they have not been actually incurred and this claim must be rejected (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, § 221, Series A no. 324).

C. Default interest

160. 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. *Decides* to join to the merits the question of the alleged non-exhaustion of domestic remedies and *rejects* it;

3. *Declares* the complaints concerning the applicants' alleged ill-treatment and lack of an effective investigation, and an alleged violation of the first and second applicants' right to effective legal assistance and the first applicant's right of access to the Court of Cassation admissible and the remainder of the applications inadmissible;

4. *Holds* that there has been a substantive violation of Article 3 of the Convention in respect of the second and third applicants;

5. *Holds* that there has been no substantive violation of Article 3 of the Convention in respect of the first applicant;

6. *Holds* that there has been a procedural violation of Article 3 of the Convention in respect of all three applicants;

7. *Holds* that there has been a violation of Article 6 § 1, taken together with Article 6 § 3 (c) of the Convention, in that the first and second applicants were deprived of effective legal assistance;

8. *Holds* that there has been a violation of Article 6 § 1, in that the first applicant was disproportionately denied access to court;

9. *Holds*

(a) that the respondent State is to pay the applicants, 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 10,000 (ten thousand euros) to the first applicant, EUR 27,000 (twenty-seven thousand euros) to the second applicant and EUR 25,000 (twenty-five thousand euros) to the third applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicants, 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;

10. *Dismisses* the remainder of the applicants' 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.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Motoc is annexed to this judgment.

J.C.M.
M.T.

CONCURRING OPINION OF JUDGE MOTOC

(Translation)

I totally agree with the approach taken by the Chamber. It has adopted an approach that is important for the Court's case-law, but the reasoning is not sufficiently developed. The Chamber has correctly classified as torture the violence inflicted on the two victims, who were in State custody. But on what legal basis did the Chamber rule that those acts were torture? Above all, how did the Chamber make the distinction between torture and inhuman or degrading treatment?

1. There is no doubt that the State agents in this case acted with the intention of obtaining a confession (see, to similar effect, *Dikme v. Turkey*, no. 20869/92, § 64, ECHR 2000-VIII, and *Aksoy v. Turkey*, 18 December 1996, § 9, *Reports of Judgments and Decisions* 1996-VI) in the case of the second applicant and of obtaining information in the case of the third applicant. In both instances, they used force to intimidate the two victims. Both applicants were in a state of vulnerability on account of the fact that they were being held by the police. The factors indicating to us that this was a case of torture rather than of inhuman or degrading treatment are the intent behind the conduct (*dolus specialis*) and the victims' vulnerability. The existence of these two factors prevailed over the physical intensity of the pain or suffering (see Nowak M. and McArthur E., *The United Nations Convention Against Torture. A Commentary*, Oxford University Press, 2008, p. 77).

2. The case of these two victims, a mother and daughter, is singular, in that the acute suffering resulting from the acts committed by the State agents was not only physical, but also psychological. It is not necessary in this case to find the interrogation techniques with which the Court is familiar – Palestinian hanging (see *Aksoy v. Turkey*, cited above), beatings (see *Dikme v. Turkey*, cited above), *falaka* (*Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII), electric shocks (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, ECHR 2000-X, and *Mikheyev v. Russia*, no. 77617/01, 26 January 2006) or rape (see *Aydin v. Turkey* [GC], no. 23178/94, 25 September 1997) – but the intense psychological suffering arising from the very close family ties between the two victims was considered sufficient to find that the physical violence which occurred during the period in custody had amounted to an act of torture.

3. It is clear that the Court has already referred to the importance of psychological suffering in *Ireland v. the United Kingdom* (18 January 1978, Series A no. 25), in which the Court indicated that psychological suffering is sufficient in itself to classify an act as torture. The Commission had already used the term "non-physical torture" in the Greek case

(Yearbook 12), and described it as a state of anguish and stress caused by means other than bodily assault.

4. Given that the present case concerned not only physical but also psychological violence, the Chamber ought to refer to the Court's principles as set out in *Campbell and Cosans v. the United Kingdom* (25 February 1982, Series A no. 48) and developed in *Gäfgen v. Germany* ([GC], no. 22978/05, ECHR 2010). Thus, to threaten an individual with torture may constitute at least inhuman treatment (see *Campbell and Cosans v. the United Kingdom*, § 26) and "[I]n particular, the fear of physical torture may itself constitute mental torture. However, there appears to be broad agreement, and the Court likewise considers, that the classification of whether a given threat of physical torture amounted to psychological torture or to inhuman or degrading treatment depends upon all the circumstances of a given case, including, notably, the severity of the pressure exerted and the intensity of the mental suffering caused" (see *Gäfgen*, cited above, § 108).

5. Lastly, the question of evidence. The two applicants submitted medical certificates confirming the physical violence. These certificates have been contested by the Government, which have not submitted any relevant evidence in support of their challenge. Admittedly, the two applicants have not submitted medical certificates attesting to their psychological distress, but it was impossible to produce these in the given circumstances. The victims' credibility is demonstrated by all of the coinciding factors, taken together.