CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 36894/04
by Arayik ZALYAN
and 3521/07 by Razmik SARGSYAN
and Musa SEROBYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 11 October 2007 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having regard to the above applications lodged on 23 September 2004 and 9 November 2006,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Arayik Zalyan, Mr Razmik Sargsyan and Mr Musa Serobyan, are Armenian nationals who were born in 1985 and live in Vanadzor and Gyumri, Armenia. They are represented before the Court by Ms Z. Postanjyan, a lawyer practising in Yerevan.

A. The circumstances of the case

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

1. Background to the case

In May 2003 the applicants were drafted into the Armenian army and assigned to military unit no. 33651 situated near the village of Mataghis in the unrecognised Nagorno Karabakh republic (hereafter, Nagorno Karabakh).

On 9 January 2004 criminal proceedings no. 90800104 were instituted on account of the murder of two servicemen from the same military unit who had been found dead in a nearby reservoir on 9 and 10 January 2004 respectively. They had been murdered on 24 December 2003.

It appears that in the period between 9 January and 19 April 2004 a number of servicemen were questioned as witnesses in connection with the murders.

2. The applicants' alleged deprivation of liberty of 19-24 April 2004 and their alleged ill-treatment

According to the applicants, on 19 April 2004 they were taken to the office of the chief of battalion, where they were questioned in connection with the murders. The questioning was carried out in the presence of chief of battalion E.M. by investigators A.H. and S.T. of the Military Prosecutor's Office of Armenia (*ՀՀ զինվորական դատախազություն*) and military police officer V.K. The law enforcement officers started beating, threatening and verbally abusing the applicants, forcing them to confess to the murders. The applicants submit that, on the same date, they were transported by these law enforcement officers to the Martakert Garrison Military Prosecutor's Office in Nagorno Karabakh (*ԼՂՀ Մարտակերտի կայազորային զինդատախազություն*) by order of the Military Prosecutor of Armenia (*ՀՀ զինվորական դատախազ*).

According to the materials of the case, the applicants were transported from their military unit to the Martakert Garrison Military Prosecutor's Office on 21 April 2004. On the same date, from 14h50 to 19h25, the applicant Zalyan (the first applicant) was questioned as a witness by the above-mentioned investigator S.T. From 14h35 to 19h40, the applicant Sargsyan (the second applicant) was questioned as a witness by investigator A.K. of the Martakert Garrison Military Prosecutor's Office. It appears that the applicant Serobyan (the third applicant) was also questioned as a witness. Later that day the applicants were transported to the Stepanakert Military Police Department in Nagorno Karabakh (*ԼՂՀ Ստեփանակերտի ռազմական ոստիկանության բաժին*) where, from

22h35 to 00h10, the second applicant was again questioned as a witness by the above-mentioned investigator A.H. The questioning was videotaped.

On 23 April 2004 the Military Prosecutor of Armenia issued a letter addressed to the Defence Minister of Nagorno Karabakh (*ԼՂՀ պաշտպանության նախարար*), with a copy to the Chief of Military Police of Armenia (*ՀՀ պաշտպանության նախարարության ռազմական ոստիկանության վարչության պետ*), the Chief of the Stepanakert Military Police Department (*Ստեփանակերտի ռազմական ոստիկանության բաժնի պետ*) and the Commander of military unit no. 33651 (*ՊԲ թիվ 33650 զորամասի հրամանատար*), having the following content:

> "For the purposes of criminal case no. 90800104 examined by the investigation unit of the Military Prosecutor's Office of Armenia, on 21 April 2004 [the applicants], who were performing their military service at military unit no. 33651, were transported to the Martakert Garrison Military Prosecutor's Office, whereupon they were transported to the Stepanakert Military Police Department.
>
> It is necessary to transport the three above-mentioned servicemen to military unit no. 10724 in Yerevan in order to carry out a number of investigation activities with their participation."

On the same date, the applicants were transported to an isolation cell in military unit no. 10724 in Yerevan which, according to the applicants, was administered by the Military Police of the Ministry of Defence. The second applicant was again questioned as a witness.

On 24 April 2004, from 10h45 to 15h10, the second applicant was again questioned as a witness by investigator A.H. at the Military Prosecutor's Office of Armenia. During this questioning, the second applicant confessed that it was he and the other two applicants who had committed the murders.

According to the applicants, during the entire above period, they were questioned on numerous occasions as witnesses, in spite of already being suspected of the crime. They were continuously subjected to beatings, threats and verbal abuse by the above law enforcement officers and military police officers A.B. and M. They were kept in various rooms and cells at different law enforcement agencies and were neither fed nor allowed to sleep. They were transported from one law enforcement agency to another blindfolded and with their hands chained. Furthermore, the officers threatened to rape the second applicant with a club and that his mother and younger brother would be arrested, if he refused to confess.

3. The applicants' formal arrest and indictment

On the same date when the second applicant made his confession statement, namely 24 April 2004, the applicants were formally arrested and recognised as suspects. The relevant arrest record was drawn up at 18h35 on that date at the Military Police Department in Yerevan. The second

applicant was questioned as a suspect, during which he repeated his confession in the presence of a lawyer. According to the second applicant, the lawyer was invited by the Military Prosecutor's Office and his involvement in the case amounted to the signing of documents in order to create an appearance of lawfulness. The lawyer was not chosen by him and neither he nor his family had given their consent to the lawyer's participation in the case.

On 26 April 2004 the applicants were formally charged with murder under Article 104 of the Criminal Code.

On 24 and 26 April 2004 the first applicant was questioned as a suspect and as an accused respectively. According to him, the lawyer who was present at these questionings was invited by the Military Prosecutor's Office. He was not a State-appointed lawyer and his presence merely amounted to the signing of the questioning records and was aimed at creating an appearance of lawfulness.

4. The applicants' detention on remand and the first applicant's hunger strike

a. The applicants' placement in detention

On 27 April 2004 the Arabkir and Kanaker-Zeytun District Court of Yerevan (*Երևան քաղաքի Արաբկիր և Քանաքեռ-Զեյթուն համայնքների առաջին ատյանի դատարան*) examined and granted the investigator's motions seeking to have the applicants detained on remand. The detention was to be calculated from 24 April 2004 and was valid for a period of two months.

It appears that none of the applicants lodged an appeal against the respective decisions. The first applicant submits that he was not able to do so due to the fact that at that time he had no legal assistance. According to the decision of the District Court, lawyer V.Y. had been duly notified about the court hearing but failed to appear. The first applicant was present at this hearing and made submissions.

On 14 May 2004 a lawyer hired by the first applicant's family was admitted to the case.

On 17 June 2004 the Arabkir and Kanaker-Zeytun District Court of Yerevan examined and granted the investigator's motions seeking to have the period of the applicants' detention, which was to expire on 24 June 2004, prolonged until 24 August 2004. The first applicant submitted at the court hearing that his and the second applicant's testimonies had been made under duress.

On 25 June 2004 the first applicant's lawyer lodged an appeal against this decision. In her appeal, she complained in detail, *inter alia*, that the applicants had been subjected to ill-treatment by investigator A.H. and other law enforcement officers. The lawyer also complained that the applicants

were being unlawfully kept at the isolation cell in military unit no. 10724 administered by the military police.

On 6 July 2004 the Criminal Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարան*) dismissed the appeal.

On the same date, the applicants were transferred from the isolation cell of military unit no. 10724 to Nubarashen detention facility. It appears that during this entire period the applicants were not allowed to be visited by their relatives, by a decision of the investigating authority.

On 7 July 2004 the first applicant was subjected to a medical examination at the detention facility, with the following conclusion:

> "No fresh bodily injuries or traces of beatings have been disclosed. Coverlets and mucous tunics are of a normal colour. Vesicular respiration present in the lungs. Heart sounds [unreadable]... The abdomen is soft and painless. There are no external symptoms of venereal diseases."

According to his medical record, the starting date of his detention was 19 April 2004.

On 10 July 2004 the first applicant's lawyer lodged a cassation appeal against the decision of the Court of Appeal of 6 July 2004.

On 30 July 2004 the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) dismissed the appeal.

b. The first applicant's detention on remand from 24 August to 4 November 2004 and the alleged lack of requisite medical assistance during his hunger strike

On 5 July 2004 the investigation was over.

On 3 August 2004 the first applicant went on hunger strike in protest against the allegedly unlawful actions of the law enforcement authorities.

On 5 August 2004 the first applicant and his lawyer were granted access to the case file.

On 24 August 2004 the detention period, as prolonged by the decision of 17 June 2004 of the Arabkir and Kanaker-Zeytun District Court of Yerevan, expired.

On 22 September 2004 the case file was transmitted by the prosecutor to the Syunik Regional Court (*Սյունիքի մարզի առաջին ատյանի դատարան*).

By a letter of 15 October 2004 the Chief of the Nubarashen detention facility informed the first applicant's lawyer that the detention period had been suspended in accordance with, *inter alia*, Article 138 of the Code of Criminal Procedure (CCP) by the memo of the Military Prosecutor's Office of 5 August 2004. The letter further stated that, according to memo no. 1866 of the Military Prosecutor of 22 September 2004, as of that date the detention period was under the control of the Syunik Regional Court.

On 19 October 2004 the first applicant was transferred to the Hospital for Prisoners (*«Դատապարտյալների հիվանդանոց» քրեակատարողական հիմնարկ*) due to his general emaciation as a result of the hunger strike.

On the same date, the first applicant's lawyer addressed a letter to various public authorities, including the prosecutor in charge of the detention facilities and the Chief of the Hospital for Prisoners, complaining that the applicant was unlawfully detained without a relevant court decision. She further submitted that the applicant's state of health was in a critical condition and that no requisite medical assistance had been provided for him by the administration of the Nubarashen detention facility during the entire hunger strike. The lawyer requested that the applicant be immediately released.

By a letter of 21 October 2004 the Deputy Chief of the Hospital for Prisoners informed the first applicant's lawyer that no visceral illnesses had been disclosed following the applicant's objective inpatient examination, clinical and biochemical analyses of his blood and urine, and a number of instrumental examinations. There was therefore no need for treatment with medicines. The first applicant was under constant medical supervision due to his hunger strike and the resulting general emaciation of a minor degree.

On 25 October 2004 the lawyer lodged similar requests with the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) and the Syunik Regional Court.

By a letter of 26 October 2004 the General Prosecutor's Office informed the first applicant's lawyer that the applicant had not been released from detention by virtue of Article 138 § 3 of the CCP.

On 27 October and 1 November 2004 the lawyer again requested the Kentron and Nork-Marash District Court of Yerevan to release the first applicant. She also submitted that she had visited him on 25 October 2004 at the Hospital for Prisoners. He was lying in bed motionless and looked frail. The psychologist told her that, if the first applicant continued to remain isolated on hunger strike, his life could be seriously in danger.

On 1 November 2004 the first applicant's lawyer requested the administration of the Hospital for Prisoners to provide details of the treatment provided for the applicant.

By a letter of 2 November 2004 the Deputy Chief of the Hospital for Prisoners informed the first applicant's lawyer that the applicant had undergone an examination and no visceral illnesses had been found. Due to his general emaciation, since 22 October 2004 the applicant had been receiving intravenous injections of 5% of glucose and vitamins in order to sustain the water and vitamin balance. The applicant's psychological tension

was gradually being relieved thanks to the measures taken. In his current state of health the applicant was fit to be transferred to a detention facility.

On 2 November 2004 the first applicant was discharged from the Hospital for Prisoners and transported to Stepanakert, Nagorno Karabakh, to participate in the trial. According to the discharge summary:

> "The detainee Arayik Zalyan was taken to the Hospital for Prisoners on 19 October 2004 in order to undergo an inpatient examination.
>
> The detainee underwent a clinical and laboratory instrumental examination, as a result of which no symptoms of visceral illnesses were found. He was examined by a psychiatrist who concluded that he had no psychological disorders.
>
> Taking into account his refusal to eat over a long period of time and the general emaciation of his organism, the detainee was injected with glucose and vitamins through a drip.
>
> Since an inpatient treatment is no longer necessary, the detainee is being discharged to remain under further medical supervision by the medical staff of the detention facility."

On 4 November 2004 the Syunik Regional Court decided to fix a date for the court hearing, which was to take place on an unspecified day in November 2004 at the Regional Court's seat in Stepanakert. The Regional Court noted in its decision that the detention was to remain unchanged.

On 5 November 2004 the first applicant ended his hunger strike.

On 26 November 2004 the first applicant's lawyer applied to the Chief of the Nagorno Karabakh Remand Centre (*ԼՂՀ քննչական մեկուսարանի պետ*) claiming that the first applicant's state of health was unsatisfactory following his hunger strike and requesting that he be examined by a doctor. It is not clear whether there was any follow-up to this request.

5. The ill-treatment related complaints and the court proceedings at first instance

a. The complaints made at the pre-trial stage

It appears that on 11 May 2004 the second applicant addressed a letter to the Military Prosecutor of Armenia in which he revoked his confession, claiming that he and the other two applicants had nothing to do with the murder. He submitted that he had made his confession because the law enforcement officers had threatened to arrest his mother and younger brother. It further appears that at some point the second applicant also complained to the authorities about the ill-treatment inflicted on him by the law enforcement officers.

On 25 May 2004 the first applicant addressed a letter to various public authorities, including the General Prosecutor (*ՀՀ գլխավոր դատախազ*), the Military Prosecutor and the Ombudsman (*ՀՀ մարդու իրավունքների պաշտպան*), informing them that he and the other two applicants were

being kept at the military police isolation cell and were unlawfully accused of murder. He further submitted that on 19 April 2004 he and the other two applicants had been taken in turns to the office of chief of battalion E.M. There were three other officials present in the office, including chief of battalion I. and two others who – as he later found out – were investigators A.H. and S.T. The investigators assaulted him, calling him a "murderer", beating him and demanding him to explain why they had murdered the two fellow servicemen. He was beaten so hard that he was bleeding from his nose. Thereafter he and the other two applicants were placed in a car with their T-shirts wrapped around their heads and taken to another law enforcement agency in Martakert. There he was taken to a room where he was kept blindfolded for about an hour. He could hear the desperate yells of the other two applicants and realised that they were being beaten, which lasted for about an hour. Thereafter investigator S.T. came to his room, started threatening him and saying that the others had confessed to the crime and it was better for him also to confess. Another unfamiliar officer also entered the room and started threatening him with death if he refused to confess. Thereafter they were taken to apparently a police station where he was questioned from 18h00 to 3h00. There he was verbally abused, beaten, threatened and put under pressure to confess. No drinking water was provided for him. Later that night he and the other two applicants were taken to isolation cells at a military police station in Stepanakert, where they were kept until 23 April 2004. On that date in the morning he and the third applicant were placed in a car to be taken to Yerevan. He noticed that the third applicant's face was covered with red and blue bruises. They spent the night of 23 April 2004 at a military police station in Yerevan where they were kept in separate rooms. The next day he was again questioned and then taken to a confrontation with the second applicant, during which he noticed that the latter's entire face was swollen and he was extremely frightened. The first applicant asked the authorities to carry out an investigation.

On 8 June 2004 the first applicant's lawyer addressed another complaint to the same authorities, submitting that the applicants had been unlawfully arrested between 19 and 24 April 2004 and questioned on numerous occasions on suspicion of committing a murder. The lawyer further complained about the ill-treatment inflicted on the applicants during that period. She also complained that from 23 April 2004 the applicants, in violation of the law, were kept at an isolation cell of a military police station.

By a letter of 10 June 2004 the Military Prosecutor informed the first applicant and his lawyer, in reply to their complaints, that:

> "The first investigative activities involving [the applicants] were carried out on 21 April 2004 at the Martakert Garrison Military Prosecutor's Office where they were questioned as witnesses. Before the questioning they had been informed about the right not to testify against themselves ... guaranteed by Article 42 of the Constitution.

In order to clarify a number of discrepancies found in their statements, on 21 April 2004 [the applicants] were taken to the Stepanakert Military Police Department of the Ministry of Defence of Armenia for the purpose of conducting confrontations and further questionings.

On 22 April [the second applicant], upon my instruction, was transported to Yerevan as a witness in a criminal case, since I found it inexpedient for him to continue his military service at his military unit. In Yerevan he stayed in the barracks together with the servicemen entrusted with the guarding of the building of the Military Prosecutor's Office of Armenia.

[The first and the third applicants] were transported to Yerevan from Stepanakert the night of 23-24 April and stayed without being isolated in the room envisaged for servicemen on duty of military unit no. 10724...

On 24 April [the second applicant] was questioned again as a witness and he was again informed about the requirements of Article 42 of the Constitution, which is confirmed by his signature under the record of the questioning.

[The applicants] were arrested on 24 April 2004 and were immediately provided with lawyers.

From the moment of their arrest all the investigative activities in respect of [the applicants], such as questionings, confrontations, the arraignment, etc., were carried out in the presence of their lawyers.

In compliance with the Code of Criminal Procedure the accused took part in the hearings concerning the imposition of detention, during which they did not make any statements about the 'ill-treatment inflicted' on them...

The accused are kept in isolation cells of the military police in accordance with Annex 14 to the 'Regulations for the Garrison and Sentry Services'.

A medical examination can be conducted in respect of [the first applicant] and the others if a relevant request is made."

On 14 June 2004 the first applicant's lawyer lodged a motion with the Military Prosecutor asking him to remove investigators A.H. and S.T. from dealing with the case on the ground that they had, *inter alia*, ill-treated the applicants.

On 18 June 2004 the Military Prosecutor rejected the motion as unsubstantiated, stating that the first applicant had been questioned on 21 April 2004 in compliance with all the rules of criminal procedure, including being informed about the right not to testify against himself guaranteed by Article 42 of the Constitution. No investigative activities involving the first applicant were carried out on 19 and 20 April 2004. He was arrested on 24 April 2004 and was immediately provided with a lawyer. Neither the first nor the third applicant had complained about ill-treatment prior to a similar complaint made by the second applicant. The foregoing indicated that the allegations of ill-treatment made by the accused and their lawyers were unsubstantiated, concocted and were aimed at justifying the accused, who were employing coordinated common tactics.

The second and the third applicants lodged similar motions on 10 and 16 June 2004 which were rejected on 12 and 18 June 2004 respectively.

On 5 July 2004 the first applicant's mother complained to the Minister of Defence that, *inter alia*, her son and the other accused were being subjected to various types of coercion and pressure by the investigators.

On 16 July 2004 the General Prosecutor rejected another motion lodged by the first applicant's lawyer challenging both the Military Prosecutor and the two above investigators, stating, *inter alia*, that the allegations of ill-treatment had not been confirmed. No such allegations had been made by the applicants at the court hearings concerning their detention and they had simultaneously started to make such complaints at the end of May 2004.

On 21 July 2004 investigator A.H. replied to the first applicant's mother that her son had been charged on the basis of sufficient evidence and no coercion or pressure had been applied to him.

On 22 July 2004 the Deputy Ombudsman informed the General Prosecutor about the second applicant's allegations of ill-treatment. The Deputy Ombudsman further stated that the second applicant had been kept from 26 April to 7 July 2004 at a military police isolation cell in violation of the Law on Keeping the Arrested and Detained Persons and the Regulations for the Garrison and Sentry Services. According to these legal acts, the second applicant should not have been kept at the isolation cell for a period exceeding 72 hours.

On 26 July 2004 the Deputy Ombudsman was informed by the General Prosecutor's Office that the accused had been kept at a military police isolation cell on the basis of Annex 14 to the above Regulations and had been transferred to Nubarashen detention facility following the entry into force of the amendments to these Regulations adopted by the Parliament on 28 April 2004 and ratified by the President on 22 May 2004.

On 24 September 2004 the Deputy Ombudsman addressed a letter to the General Prosecutor in connection with the first applicant's complaint about ill-treatment. The Deputy Ombudsman pointed out that the above complaint had been transmitted to the Military Prosecutor's Office, the authority whose actions were complained about, and the criminal case continued to be dealt with by the same investigator who was alleged to have inflicted ill-treatment on the accused.

In her motion lodged with the Kentron and Nork-Marash District Court of Yerevan on 27 October 2004, the first applicant's lawyer complained, *inter alia*, that he had been ill-treated when questioned as a witness.

By a letter of 27 October 2004 judge M. of the District Court informed the first applicant's lawyer that, in order to have the circumstances of the alleged unlawful methods of investigation examined, she had to apply to the authority dealing with the case. The District Court was not, however, dealing with the first applicant's case.

b. The complaints made during the court proceedings

On 18 May 2005 the Syunik Regional Court, seated at Stepanakert, found the applicants guilty of murder and sentenced them to 15 years' imprisonment. In connection with the allegations of ill-treatment, the Regional Court heard the relevant investigators and army officials, who stated that no ill-treatment had been inflicted on the applicants. The Regional Court concluded that the lawyer's allegations of coercion, threats and psychological pressure were aimed at helping the applicants to avoid criminal liability.

On 1 June 2005 the applicants lodged an appeal against the judgment of the Syunik Regional Court, complaining, *inter alia*, about the alleged ill-treatment and the second applicant's confession being made under coercion.

On 12 December 2005 the applicants' lawyers applied to the General Prosecutor, complaining in detail about the alleged ill-treatment inflicted on the applicants and requesting the institution of criminal proceedings.

By a letter of 26 December 2005 the General Prosecutor's Office informed the applicants' lawyers that, during the court examination of the criminal case against the applicants, the Syunik Regional Court had taken the necessary measures to verify the statements alleging that the accused had been subjected by the investigators to coercion during the investigation and found them to be unsubstantiated.

On 8 January 2006 the applicants' lawyer complained to the Kentron and Nork-Marash District Court of Yerevan that the Prosecutor's Office was refusing to investigate the allegations of ill-treatment and to institute criminal proceedings.

On 1 February 2006 the Kentron and Nork-Marash District Court of Yerevan dismissed the complaint as unsubstantiated.

On 14 February 2006 the applicants' lawyer lodged an appeal.

On 14 March 2006 the Criminal and Military Court of Appeal upheld the decision of the District Court, stating that the allegations of ill-treatment had been examined during the proceedings before the Syunik Regional Court and the case was currently being examined on the merits by the Criminal and Military Court of Appeal.

On 28 March 2006 the applicants' lawyer lodged a cassation appeal.

On 1 June 2006 the Court of Cassation left the appeal without examination on the ground that, in accordance with the criminal procedure law, no appeal lay against the decision of the Court of Appeal.

6. The second applicant's hunger strike in the course of the appeal proceedings

On 3 August 2005 the Criminal and Military Court of Appeal, presided by judge A., commenced the examination of the applicants' criminal case on appeal.

On 12 August 2005 the second applicant went on hunger strike.

It appears that at a court hearing held before the Criminal and Military Court of Appeal on 16 August 2005 the second applicant informed the presiding judge that he was not feeling well but the hearing was not interrupted. It further appears that at the hearing of 17 August 2005 the second applicant felt sick and an ambulance was called. The second applicant's state of health was found to be unsatisfactory and the hearing was adjourned. The next hearing was scheduled for 18 August 2005 but it did not take place because the second applicant was unfit for trial. The examination of the case was adjourned for an indefinite period of time.

It further appears that, during the following few months, the Court of Appeal wrote on several occasions to the administration of Nubarashen detention facility inquiring about the second applicant's state of health, to which the administration always replied that the second applicant was on hunger strike and was unfit for trial.

On an unspecified date, the prosecutor lodged a request seeking to establish whether the second applicant was fit for trial.

On 4 November 2005 the Criminal and Military Court of Appeal granted the request and ordered the second applicant's medical examination. The medical examination was to establish whether the second applicant suffered from any illness, whether he was fit for trial and whether he could be kept in detention.

On 11 November 2005 the relevant experts visited the second applicant at Nubarashen detention facility but he refused to undergo the examination.

On 14 November 2005 the relevant expert opinion was prepared which apparently did not contain the answers to the questions posed, due to the second applicant's refusal to be examined.

On 25 November 2005 the second applicant was examined by an outside doctor who recorded a number of illnesses, including general emaciation, various muscle and spine disorders, water and electrolyte balance disorders, chronic hepatocholecystitis in its aggravated phase, intoxication and apathy. The doctor concluded that it was strictly necessary to transfer the second applicant to a hospital to define more precisely the diagnosis and carry out treatment.

On 30 November and 1 December 2005 court hearings were held. According to the applicant, the presiding judge ordered his participation despite the fact that he was unfit for trial. At the hearing of 1 December 2005 the second applicant lost consciousness and an ambulance was called. He was diagnosed as having a hypotonic form of neurocirculatory asthenia. According to the applicant, the ambulance doctor recorded the need to take him to a hospital. Despite this, the judge ordered that he be taken back to Nubarashen detention facility. The trial was again adjourned for an indefinite period of time.

It appears that on 2 December 2005 the second applicant's lawyer applied to the General Prosecutor's Office, seeking to institute criminal proceedings against judge A. on the ground that he had adopted an unlawful decision by adjourning the trial for an indefinite period of time. The lawyer further complained that the judge was ignoring the various medical reports recommending the provision of appropriate medical assistance for the second applicant and was not allowing measures aimed at improving his state of health to be taken.

By a letter of 14 December 2005 the General Prosecutor's Office replied that there were no grounds to institute criminal proceedings against judge A. The letter further stated that the issues raised by the lawyer were to be resolved in the course of the court proceedings in accordance with the criminal procedure rules.

On 8 January 2006 the second applicant's lawyer complained to the courts about the refusal to institute criminal proceedings.

On 9 January 2006 the second applicant ended his hunger strike.

On 1 February 2006 the Kentron and Nork-Marash District Court of Yerevan dismissed the lawyer's complaint, finding that the trial had been adjourned because of the second applicant's poor state of health and that there was nothing illegal in the judge's actions.

On 14 February 2006 the lawyer lodged an appeal.

On 16 March 2006 the Criminal and Military Court of Appeal dismissed the appeal on the same grounds.

On 28 March 2006 the lawyer lodged a cassation appeal.

On 12 June 2006 the Court of Cassation left the appeal without examination on the ground that, in accordance with the criminal procedure law, no appeal lay against the decision of the Court of Appeal.

7. The applicants' conviction on appeal and the cassation proceedings

On 30 May 2006 the Criminal and Military Court of Appeal examined the case on appeal and decided to increase the applicants' sentences to life imprisonment. In doing so, the Court of Appeal rejected the lawyers' requests seeking to have the statements allegedly made by the applicants under duress declared inadmissible.

It appears that on 9 June 2006 the applicants lodged an appeal.

On 7 August 2006 the Court of Cassation returned their appeal, requesting them to correct a shortcoming and to re-submit the appeal in accordance with the newly adopted amendments to the CCP.

On 11 September 2006 the first and second applicants re-submitted their appeals. It appears that, on an unspecified date, the third applicant also followed suit.

On 9 October 2006 the Court of Cassation decided to admit the applicants' appeals.

On 22 December 2006 the Court of Cassation examined the appeals and decided to quash the judgments of 18 May 2005 and 30 May 2006 and to remit the case for further investigation. The Court of Cassation also decided to annul the preventive measure and to release the applicants from detention.

The proceedings are currently still pending.

B. Relevant domestic law

1. The Constitution (as in force at the material time)

According to Article 42, no one was obliged to testify against himself, his spouse and his close family members.

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

a. Ill-treatment and investigation

According to Article 11 § 7, in the course of criminal proceedings no one shall be subjected to torture and to unlawful physical or mental violence, including such treatment inflicted through the administration of medication, hunger, exhaustion, hypnosis, denial of medical assistance and other cruel treatment. It is prohibited to coerce testimony from a suspect, accused, defendant, victim, witness and other parties to the proceedings by means of violence, threat, trickery, violation of their rights, and through other unlawful actions.

According to Article 17 § 4, complaints alleging a violation of lawfulness in the course of criminal proceedings must be thoroughly examined by the authority dealing with the case.

According to Article 105 § 1(1), materials obtained by violence, threat, trickery, humiliation of a person, and through other unlawful actions cannot constitute the basis for charges or be used as evidence in criminal proceedings.

Article 175 requires the competent authority to institute criminal proceedings if there are appropriate grounds. According to Articles 176 and 177, one of such grounds is information about crimes received from physical persons. Such information can be provided orally or in writing.

According to Article 180, such information must be examined and decided upon immediately, or in cases where it is necessary to check whether there are lawful and sufficient grounds to institute proceedings, within ten days following the receipt of such information. Within this period, additional documents, explanations and other materials may be requested and examinations ordered.

According to Article 181, one of the following decisions must be taken upon receipt of any such information: (1) to institute criminal proceedings,

(2) to refuse the institution of criminal proceedings, or (3) to hand over the information to an authority competent to deal with it.

b. Witnesses

According to Article 86 §§ 1 and 3 (1), a witness is a person who has been called to testify by a party or the authority dealing with the criminal case and who may be aware of any circumstance related to the case which needs to be clarified. A witness is obliged to appear upon the summons of the authority dealing with the criminal case in order to testify or to participate in the investigative and other procedural activities.

According to Article 205 §§ 1 and 2, a witness is called by a summons which is served on him upon his signature. The summons shall indicate the calling authority and before whom, having which procedural status, how, where and when (the date and hour of appearance) the person called should appear.

According to Article 206 §§ 1 and 2, a witness can be questioned about any important circumstance related to the case, including the suspect, the accused, the victim and other witnesses. A witness shall be questioned at the location where the investigation is being carried out or, if necessary, where he is located.

c. Arrest

According to Article 128 § 1, an arrest is the taking of a person into custody, bringing him before the investigating authority or the authority dealing with the case, the drawing up of the relevant record and informing him about it, in order for him to be kept in custody for a short period of time in places and conditions defined by law.

According to Article 129, the period of arrest of a person suspected of committing an offence cannot exceed 72 hours from the moment of taking him into custody.

According to Article 130, if it appears from the evidence obtained in the case that a person has committed an offence, and if he is located elsewhere or his location is unknown, the investigating authority is entitled to decide to arrest him.

According to Article 132, the arrested person must be released upon the decision of the authority dealing with the case if, *inter alia*, the suspicion of committing an offence has not been confirmed or the maximum time-limit for an arrest prescribed by this Code has expired and the court has not adopted a decision to detain the accused on remand.

d. Detention on remand

According to Article 134, preventive measures are measures of compulsion applied in respect of arrested or accused persons in order to prevent their inappropriate behaviour and to ensure the enforcement of the

judgment in the course of the criminal proceedings. Preventive measures include, *inter alia*, detention on remand and bail which can be applied only in respect of the accused.

According to Article 136, detention on remand and bail are imposed only by a court decision upon the investigator's or the prosecutor's motion or of the court's own motion during the court examination of the case. The court can replace the detention with bail also upon the motion of the defence.

According to Article 137, detention on remand is the placement of a person in places and conditions prescribed by law. A detainee cannot be kept more than three days in a place reserved for arrested persons. The court's decision imposing detention can be contested before a higher court.

According to Article 138 § 3, in pre-trial proceedings of a criminal case the detention period may not exceed two months, except for cases prescribed by this Code. The running of the detention period shall be suspended when the prosecutor transmits the criminal case to the court or when the accused or his lawyer are familiarising themselves with the case file.

According to Article 139 §§ 1 and 3, if it is necessary to prolong the accused's detention period, the investigator or the prosecutor must submit a well-grounded motion to the court not later than ten days before the expiry of the detention period. When deciding on the prolongation of the accused's detention period, the court shall prolong the detention period within the limits prescribed by this Code, on each occasion for a period not exceeding two months.

According to Article 141 (10), the administration of a detention facility is obliged to, *inter alia*, immediately release a person kept in detention without the relevant court decision or if the detention period imposed by the court decision has expired.

According to Article 292, the judge dealing with the case shall examine the materials in the case and within fifteen days from the date of taking over the case shall adopt a decision, *inter alia*, fixing the date of the court hearing.

According to Article 293 § 2, the decision fixing the date of the court hearing shall contain, *inter alia*, a decision annulling, modifying or imposing the preventive measure.

According to Article 300, when adopting decisions, the court must decide on the issue whether to impose on the accused a preventive measure and whether the type of preventive measure, if it has been imposed, is justified.

3. *Regulations for the Garrison and Sentry Services in the Armed Forces of Armenia (approved by a law adopted on 3 December 1996)* (ՀՀ զինված ուժերի կայազորային ու պահակային ծառայությունների կանոնագիրք)

Paragraph 2 of Annex 14, prior to the amendments adopted on 28 April 2004 and which entered into force on 12 June 2004, provided that arrested servicemen could also be kept at the disciplinary isolation ward besides servicemen isolated for disciplinary reasons. Following the introduction of these amendments, paragraph 2 provides that arrested or detained servicemen cannot be kept at the garrison disciplinary isolation cell for a period exceeding 72 hours.

4. *Government Decree no. 1015 of 19 October 2001 on the Creation of a Criminal Executive Service Within the Ministry of Justice of Armenia* (ՀՀ կառավարության 2001 թ. հոկտեմբերի 19-ի թիվ 1015 որոշումը ՀՀ արդարադատության նախարարության համակարգում քրեակատարողական ծառայություն ստեղծելու մասին)

According to this Decree, a Criminal Executive Service was created within the Ministry of Justice which took over the administration of all the criminal executive institutions previously administered by the Ministry of Interior. The Decree included a list of all the criminal executive institutions, which did not include military unit no. 10724.

5. *The Law on Keeping Arrested and Detained Persons (in force as of 1 April 2002)*

According to Article 4, facilities for keeping arrested and detained persons operate under the authority of a public authorised body.

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

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

6. *The Law on the Criminal Executive Service (in force from 25 December 2003 until 27 August 2005)*

According to Article 2, the Criminal Executive Service operates within the Ministry of Justice. One of its main objectives, according to Article 5, is to keep persons in detention on grounds and in a procedure prescribed by

law. Its central body, according to Article 6, is the Criminal Executive Department of the Ministry of Justice which administers and supervises the criminal executive institutions which, according to Article 8, include correction institutions and detention facilities.

COMPLAINTS

1. The applicants complain under Article 3 of the Convention that during the entire period when they were questioned as witnesses they were subjected to ill-treatment. From 23 April to 6 July 2004 they were kept at the isolation cell of military unit no. 10724 which was under the authority of the Military Police, despite the fact that this facility was not intended for suspects or accused, who were required by the law to be kept in pre-trial detention facilities administered by the Ministry of Justice. This was done in order for the law enforcement officers to be able to continue terrorising the applicants and to conceal the injuries inflicted by the ill-treatment. Furthermore, there was no effective investigation carried out into their allegations of ill-treatment.

2. The first applicant complains under Article 3 of the Convention that he did not receive requisite medical or psychological assistance and was not allowed to meet his relatives while on hunger strike.

3. The second applicant complains under Article 3 of the Convention that he was subjected to ill-treatment in the period from the end of August 2005 to the beginning of January 2006 by the actions of the presiding judge of the Criminal and Military Court of Appeal. In particular, the judge ordered on several occasions his participation in the trial, notably the hearings of 30 November and 1 December 2005, despite the fact that he was sick and unfit for trial because of the hunger strike.

4. The first applicant complains under Article 5 § 1 of the Convention that

(a) he was unlawfully detained as a witness between 19 and 24 April 2004. He alleges that his stay at various law enforcement agencies effectively amounted to a deprivation of liberty which did not fall under any of the grounds permitted by Article 5 § 1. No decision was made authorising his deprivation of liberty for that period. Furthermore, there was no reasonable suspicion for arresting him considering that he was only a witness. In any event, despite formally having the status of a witness, he was in reality already being suspected of the crime and was therefore unlawfully detained; and

(b) his detention on remand from 24 August to 4 November 2004 was unlawful since there was no court decision authorising this period of detention.

5. The first applicant complains under Article 5 § 2 that, during the period when he was questioned as a witness, it was not explained to him that he was in fact arrested and no reasons for his arrest were given to him.

6. The first applicant complains under Article 5 § 4 that he was not brought promptly before a judge. In particular, he was arrested on 19 April 2004 while he was brought before a judge only on 27 April 2004. Furthermore, during that period he was not able to institute proceedings to contest the lawfulness of his arrest.

7. The first applicant complains under Article 6 §§ 1 and 3 (a) and (c) of the Convention that

(a) his right to silence and not to incriminate himself were violated when he was forced to testify as a witness;

(b) the tribunal examining his case was not established by law;

(c) the system of appointment and removal of judges did not ensure the full independence of the tribunal examining his case;

(d) he was not promptly and in detail informed about the nature and cause of the accusation against him; and

(e) he had no legal representation from 19 April to 14 May 2004, including when he was questioned as a witness and during the first court hearing on his detention of 27 April 2004.

THE LAW

1. The applicants complain that they were ill-treated on 19-24 April 2004, that there was no effective investigation into their allegations of ill-treatment and that they were unlawfully kept in the isolation cell of military unit no. 10724 until 6 July 2004. They invoke Article 3 which provides:

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The first applicant complains that no requisite medical assistance was provided to him during his hunger strike. He invokes Article 3 of the Convention, cited above.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The second applicant complains about having been subjected to ill-treatment in the course of the appeal proceedings and invokes Article 3 of the Convention, cited above.

The Court recalls that it may only deal with a case within a period of six months from the date of the final decision. Where an applicant complains of a continuing situation, the six month period set by Article 35 § 1 begins when the situation ends (see, e.g., *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI). In the present case the second applicant complains of being subjected to ill-treatment while he was on hunger strike by the actions of judge A. in the course of the appeal proceedings. The Court notes that, in doing so, the second applicant specifically refers to the events which took place at the hearings of 30 November and 1 December 2005, while the hunger strike itself ended on 9 January 2006. This complaint, however, was lodged only on 9 November 2006.

It is true that the second applicant attempted to institute criminal proceedings against judge A. However, the Court doubts whether this was an effective remedy to exhaust in respect of his complaints about being unfit for trial and the adjournment of the court examination – issues which the applicant should have attempted to contest and resolve in the course of the trial against him. Nevertheless, even assuming that this was an effective remedy, this complaint was in any event lodged out of time since the final decision dismissing the applicant's application against the actions of judge A. was taken by the Criminal and Military Court of Appeal on 16 March 2006 and no further appeals lay against this decision according to the domestic law.

It follows that this complaint was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

4. The first applicant complains that his alleged arrest of 19-24 April 2004 and his detention from 24 August to 4 November 2004 were unlawful. He invokes Article 5 § 1 of the Convention which provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

5. The first applicant complains that no reasons for his arrest were given to him and invokes Article 5 § 2 of the Convention which provides:

"2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

6. The first applicant complains that he was not brought promptly before a judge and that he was not able to contest the lawfulness of his arrest. He invokes Article 5 § 4 of the Convention. The Court considers that the first part of this complaint would be more appropriately dealt with under Article 5 § 3 of the Convention. These provisions, insofar as relevant, provide:

"3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power...

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

7. The first applicant raises various complaints under Article 6 of the Convention which, insofar as relevant, provides:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law...

...

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

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

...

(c) to defend himself ... through legal assistance of his own choosing..."

The Court notes that the criminal proceedings against the first applicant are still pending before the domestic courts and no final decision has been taken.

It follows that these complaints are premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Decides to join the applications;

Decides to adjourn the examination of the applicants' complaints concerning the alleged ill-treatment and lack of effective investigation, and the first applicant's complaints concerning the alleged lack of requisite medical assistance in detention and concerning his arrest and detention;

Declares the remainder of the applications inadmissible.

Stanley NAISMITH
Deputy Registrar

Boštjan M. ZUPANČIČ
President