



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

THIRD SECTION

DECISION

Application no. 52316/09
Alik MATEVOSYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 15 May 2012 as a Chamber composed of:

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ineta Ziemele,

Luis López Guerra,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above application lodged on 24 September 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Alik Matevosyan, is an Armenian national who was born in 1987 in Abovyan and is currently serving a prison sentence in Armenia. He is represented before the Court by Mr H. Baghdasaryan, a lawyer practising in Herher.

A. The circumstances of the case

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

3. The applicant was performing military service in the Syunik Region of Armenia.

4. On 29 April 2006 the dead body of a fellow serviceman, A.H., was found hanging from a tree with his arms tied behind his back with a wire, on the land adjacent to the applicant's military unit. On the same day the Military Prosecutor's Office of Zangezur Garrison instituted criminal proceedings on account of A.H.'s death.

5. According to the materials of the case, on 2 May 2006 the applicant was questioned by an investigator from the Military Prosecutor's Office in the town of Kapan in connection with the instituted criminal case. It appears that on the same day he and his co-serviceman, R.H., were subjected to disciplinary punishment in the form of 10 days' arrest for beating A.H. a month before and the next day were taken to the disciplinary isolation block of the Military Police Headquarters in Yerevan, which is apparently situated in a military unit, where they were kept until 12 May 2006.

6. Within the above period, the applicant and R.H. were questioned at the Military Police Headquarters as witnesses in the instituted criminal case. It appears that during questioning on 7 May 2006 R.H. made confession statements according to which he and the applicant had murdered A.H. On 16 May 2006 a confrontation was held by the investigator between R.H. and the applicant.

7. It appears from a letter of the chief of the disciplinary isolation block addressed to the Military Prosecutor's Office that on 12 May 2006 the applicant was transferred from the disciplinary isolation block to a different military unit to the one he was serving in.

8. On 17 May 2006 the applicant was arrested on suspicion of the beating and murder of A.H. On the same day the investigator requested the Public Defender's Office to grant a defence lawyer to the applicant, who was assigned the next day.

9. On 20 May 2006 the applicant was charged with a count of aggravated violation of military discipline rules and a count of aggravated murder, as provided by Article 359 § 2 and 104 § 2 (10) of the Criminal Code. In particular, the investigator found that in March 2006 the applicant, together with R.H., had subjected A.H. to beatings and, on 28 April 2006, had murdered him by hanging him from a tree.

10. On the same day, the Arabkir and Kanaker-Zeytun District Court of Yerevan, upon an investigator's motion, decided to detain the applicant on remand. It appears that the applicant was then transferred to the common remand centre in Nubarashen.

11. According to the applicant, in reality on 1 May 2006 he was taken to the Kapan Military Police Department where he was kept until 3 May 2006. Thereafter, he was taken to the disciplinary isolation block of the Military Police Headquarters, where he was kept until 20 May 2006. Throughout the whole period he was subjected to severe beatings and torture by the military police officers and the investigators who hit him in the soft parts of the body, as well as the “unnoticed” parts of the body including the soles of the feet, forcing him to confess to the murder. No legal representative was allocated to him at that time. R.H. and another co-serviceman, who had been taken to the Military Police Headquarters in connection with the death of A.H., were beaten too. R.H. did not stand up to the beatings and made confession statements.

12. On 21 June 2006, when in the Nubarashen remand centre, the applicant lodged a complaint with the General Prosecutor’s Office, the President and the Chairman of the Parliament in which he stated as follows:

“... On 1 May this year military police officers came to the military outpost and took me [and two other soldiers] to the [military police] department. They took statements from us there and started to beat us. At night [R.H.] and I were kept in the reception, sitting on the floor with our hands handcuffed to the walls. I was there until 3 May during which time I witnessed only beatings and cries from different rooms where the soldiers were being beaten. On 3 [May], we, 11 soldiers, were brought to the Military Police Headquarters and I was taken to the room of [senior officer A.M.] where they started continuously to beat me, now with more brutal methods. They took off my shoes and with a thin branch started to beat the soles of my feet. They were forcing me to give false incriminatory statements. Late at night they would take me to the disciplinary isolation ward. [Several other co-servicemen] were also kept there, while the rest stayed in a common room. About 10 days later, when I was being questioned as a witness, the investigator took off my shoes. I should mention that I was kept in the isolation block illegally, upon an order from the superior. I was arrested for 10 days for violation of the internal disciplinary code. Every day they would take me to the room and try, by beatings and threats, to force me to give evidence in a way they wanted. At 1.00 at night on 17 or 18 May the investigator came and told me that my girlfriend was in the next room and that if I refused to testify in a way he wanted bad things would happen to her. They further threatened me that bad things would also happen to my 17-year old sister. Chief of the [operative-investigative] department [M.Gh.] and his deputy [A.Mar.] would also beat me. When I was not able to eat because my teeth were aching from many punches and slaps, they threatened me and used swearwords of a sexual nature. One night, as I was taken back to the isolation cell [the isolation cell officers] noticed the traces of beatings on my body and warned [the military police officers] not to bring me again to the cell in such condition[. C]hief deputy [A.Mar.] started to beat me and curse at me, asking why I had not told [the isolation cell officers] that I had touched a door. I could hear the cries and sobbing of other soldiers coming from the rooms. As one operative police officer was beating me, the other filmed the beatings on his cell-phone and showed the film, in my presence, to his other colleagues and then they would start to humiliate me. They drove me to such a state that I told them I wanted to die. At that same minute they put a blank sheet of paper in front of me, gave me a pen and said that if I wrote down that I wished to commit suicide they would assist me in doing so. They were proposing that I give false testimony against [R.H.] in the same words as [R.H.] had testified

against me ... After my confrontation with [R.H.] ... he started begging me to forgive him and said that he could not resist the beatings, pain and fear and that he had given false testimony against me as otherwise bad things would have happened to his family. I was kept in [the Military Police Headquarters] and isolation cell not for 10 but 18 days. On 20 May we were taken to the [Arabkir and Kanaker-Zeytun District] court which ordered our detention. During the court hearing I stated that I had no involvement in the death of [A.H.] and that I did not plead guilty. On 15 June the investigator, together with my defence lawyer, visited me at the [Nubarashen remand centre] and produced a forensic expert opinion according to which the grains of sand discovered on the soles of my military shoes corresponded to those taken from the site of the crime. I told them that I did not agree with the results of the expert opinion and the investigator threatened to tell the defence lawyer to go out [of the cell] for ten minutes and to [beat me]

I am asking and requesting again that the investigative authorities conduct an impartial and thorough investigation by observing the ... requirements of the criminal process, to find the real murderers and to release me and other innocent persons involved in the investigation from this inhuman nightmare.”

13. On 23 September 2006 an investigator from the Military Prosecutor’s Office, to which the applicant’s complaint had been forwarded, decided not to institute criminal proceedings. The investigator’s decision stated as follows:

“During the investigation of the criminal case [concerning the death of A.H.] the accused [applicant] lodged complaints with the President and the General Prosecutor of Armenia, which were received by the Military Prosecutor’s Office. In those complaints the accused stated that he and ...another accused, R.H., had been beaten during their stay in the Military Police Headquarters by the chief of the operative-investigative department [M.Gh.], his deputy [A.Mar.], and that violence was used against him also in the room of [senior officer A.M].

Chief of the operative-investigative department [M. Gh.] gave statements according to which no violence had been used against [the applicant] and if such a thing had happened the military police officer who had applied such violence would have been made to answer for their actions.

Similar statements were made by the chief deputy of the operative-investigative department [A.Mar.] and senior officer [A.M.].

According to the [letter of the chief of the disciplinary isolation ward of the Military Police Headquarters M.T.], there were no traces of bodily injuries on [the applicant] and [R.H.] during their admission and stay in the isolation block and the latter had not lodged any complaints about their health.

Therefore, the fact that during the period of stay of ... [the applicant] and [R.H.] in the Military Police Headquarters no violence was used against them by the officers of the above Headquarters has been substantiated during the investigation of the criminal case [concerning the death of A.H. Hence], there is no evidence of a crime.

Based on the above ... I decide not to institute criminal proceedings ... due to the absence of evidence of a crime.”

14. According to the applicant, he had not been served or notified about that decision and learned about it only upon the conclusion of the investigation, when consulting the criminal case file.

15. On an unspecified date the investigation was concluded and the criminal case was referred to the Syunik Regional Court for trial.

16. It appears that on 16 May 2007 the Syunik Regional Court, apparently upon the applicant's and R.H.'s allegations of ill-treatment, ordered a forensic medical examination.

17. According to the results of the applicant's medical examination produced on 15 June 2007, no traces of injury were discovered on his body. The medical examination report then stated that due to the belated conduct of the examination (a year after) and the absence of any medical documents it was impossible to say whether the applicant had suffered any bodily injuries since such injuries might have existed but then healed leaving no trace.

18. During the medical examination of R.H. an old conjoined fracture of his nose was discovered whose date, according to the medical examination report, it was not possible to establish. No other bodily injuries were found. It appears that the investigator then questioned several persons, including R.H.'s former co-servicemen, who stated that during their military service they had noticed that R.H.'s nose was deformed and that R.H. had told them that he had injured his nose before his conscription.

19. On 20 June 2007 the Military Prosecutor's Office of Goris Garrison decided to refuse to institute criminal proceedings concerning R.H.'s allegation of ill-treatment due to the absence of the event of a crime.

20. On 2 August 2007 the Military Prosecutor's Office sent a letter to the Syunik Regional Court informing it that the applicant's and R.H.'s allegations of beatings had not been confirmed. In this respect, the letter referred to the investigator's decisions of 23 September 2006 and 20 June 2007 as well as the results of the two forensic medical examinations.

21. On 29 August 2007 the Syunik Regional Court found the applicant guilty on a count of non-aggravated murder in connection with A.H.'s death, as provided by Article 104 § 1 of the Criminal Code, and a violation of military discipline rules, as provided by Article 359 § 2 (2) of the Criminal Code, in connection with A.H.'s beating and sentenced him cumulatively to nine and a half years' imprisonment. R.H. was found also guilty and sentenced to a prison term. The Regional Court also found that R.H.'s testimony could not be considered as inadmissible evidence because his allegations of forced confessions had not been substantiated.

22. On 7 September 2007 the applicant lodged an appeal against the judgment of the Syunik Regional Court stating that he did not agree with the judgment and asking for it to be quashed and to be acquitted since he was innocent.

23. It appears that all the other parties to the criminal proceedings also lodged appeals against the judgment of the Syunik Regional Court.

24. On 3 December 2007 the Criminal Court of Appeal dismissed all the appeals by upholding the judgment of 29 August 2007.

25. On an unspecified date the Military Prosecutor's Office lodged an appeal on points of law against the judgment of the Court of Appeal seeking to quash it in its part relating to the evaluation of the offences with a view to imposing a harsher penalty.

26. On 25 July 2008 the Court of Cassation granted the appeal by quashing the judgment of the Court of Appeal in its part concerning the evaluation of the offences and remitted the case for a fresh examination.

27. On 12 November 2008 the Criminal Court of Appeal examined the case anew and re-evaluated the applicant's offence in connection with A.H.'s death into two aggravated counts of murder, in accordance with Article 104 § 2 (10) of the Criminal Code by increasing his sentence to 15 years' imprisonment.

28. On an unspecified date the applicant's defence lawyer lodged an appeal on points of law against the judgment of the Court of Appeal of 12 November 2008 claiming, *inter alia*, that the applicant had been beaten and tortured by the military police officers. He further claimed that he and R.H. had been taken into custody and questioned as witnesses during which R.H. had been forced to make confession statements.

29. On 25 February 2009 the Court of Cassation declared the appeal inadmissible on the ground that it was precluded from examining the applicant's arguments contained in his appeal on points of law since he had not mentioned them in his appeal of 7 September 2007 and the Criminal Court of Appeal had not examined them. The Court of Cassation, however, referred to the complaint concerning the applicant's alleged ill-treatment by mentioning the investigator's decision of 23 September 2006 not to institute criminal proceedings against the military police officers. It further noted that no criminal proceedings had been instituted on account of R.H.'s allegations of ill-treatment.

30. On 26 March 2009 the applicant lodged his own appeal on points of law against the judgment of 12 November 2008 in which he raised arguments similar to those indicated in his defence lawyer's appeal.

31. On 30 April 2009 the Court of Cassation declared the applicant's appeal inadmissible for lack of merit. As to the applicant's allegation of ill-treatment, the Court of Cassation found it unsubstantiated on the same grounds as those indicated in its decision of 25 February 2009.

32. On 11 June 2009 the applicant lodged another appeal on points of law, which was left unexamined by the Court of Cassation on 7 August 2009 as lodged outside the prescribed six-month time-limit.

33. On an unspecified date thereafter the applicant lodged an application with the Constitutional Court claiming that the Court of Cassation's refusal

in its decision of 25 February 2009 to examine all the arguments indicated in his appeal on points of law was incompatible with the provisions of the Constitution.

34. On 22 December 2009 the Constitutional Court decided, on the basis of the applicant's application, that if the Court of Appeal quashes a judgment of the first instance court and adopts a new legal act, an appeal on points of law must be available to the parties to the proceedings in question.

35. Following the decision of the Constitutional Court, on 20 January 2010 the applicant lodged a new appeal on points of law against the judgment of 12 November 2008 claiming, *inter alia*, that neither the investigative authorities nor the courts had taken into account the fact that he and R.H. had been beaten and tortured by the military police officers.

36. On 26 March 2010 the Court of Cassation dismissed the applicant's appeal finding, *inter alia*, that the applicant's allegation of ill-treatment by military police officers was unsubstantiated. In doing so, the Court of Cassation relied on the investigator's decisions not to institute criminal proceedings of 23 September 2006 and 27 July 2007 in relation with the applicant's and R.H.'s alleged ill-treatment respectively.

B. Relevant domestic law

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

37. Article 104 § 10 provides that murder, that is an intentional unlawful deprivation of one's life, if prompted by hooliganism, shall be punishable for a term of up to 15 years' imprisonment or life imprisonment.

38. According to Article 359 § 2 (2), a violation of military discipline rules, accompanied with violent acts and committed by a group of persons, shall be punishable for a term of up to five years' imprisonment.

COMPLAINTS

39. The applicant complains under Article 3 of the Convention that he was beaten and tortured by military police officers when under arrest and that neither the investigating authorities nor the domestic courts took into account his statements concerning the beatings.

40. The applicant complains under Articles 5 §§ 1 (c) and 3 of the Convention that he was unlawfully arrested from 1 to 20 May 2006.

41. The applicant complains under Article 6 of the Convention that:

(a) he had no defence lawyer when under arrest despite the fact that the law obliged the authorities to provide him, as a military serviceman, with a defence lawyer;

(b) the domestic courts failed to assess properly the evidence in favour of his innocence and admitted the evidence obtained under torture; and

(c) the Court of Cassation failed to give proper reasons for its decisions and arbitrarily dismissed his appeals on points of law.

42. The applicant complains under Article 14 of the Convention and Article 1 of Protocol No. 12 that both the investigative authorities and the courts considered the statements of the military police officers to be credible when deciding not to institute criminal proceedings against them, while the evidence obtained by those military police officers through beatings and torture served as the basis for his conviction.

43. Lastly, the applicant complains under Article 2 of Protocol No. 7 that the Court of Appeal did not assess properly the factual circumstances of the case while the Court of Cassation refused to admit the case to its proceedings.

THE LAW

A. A lack of effective investigation into the applicant's allegations of ill-treatment

44. The applicant complains that no effective investigation was conducted by the authorities into his allegations of ill-treatment by the military police officers. He invokes Article 3 of the Convention which provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

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

B. Other alleged violations of the Convention

46. The applicant also raised a number of other complaints under Article 5 §§ 1 (c) and 3, Article 6 § 1 and 14 of the Convention as well as Article 1 of Protocol No. 12 and Article 2 of Protocol No. 7 (see paragraphs 40–43 above).

47. 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.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the ineffectiveness of the investigation into his allegations of ill-treatment;

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President