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

THIRD SECTION

CASE OF MKHITARYAN v. ARMENIA

(Application no. 22390/05)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

04/05/2009

This judgment may be subject to editorial revision.

In the case of Mkhitaryan v. Armenia**,**

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

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Luis López Guerra, *judges,*

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 22390/05) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Arman Mkhitaryan ("the applicant"), on 15 September 2003.

2. The applicant was represented by Mr M. Muller, Mr T. Otty, Mr K. Yildiz and Ms L. Claridge, lawyers of the Kurdish Human Rights Project (KHRP) based in London, Mr T. Ter-Yesayan, a lawyer practising in Yerevan, and Mr A. Ghazaryan. 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. On 12 September 2005 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and lives in the village of Karakert, Armenia.

A. Administrative proceedings against the applicant

5. The applicant has been a member of the Armenian Communist Party since 1998.

6. In February and March 2003 a presidential election took place in Armenia. Following the first and second rounds of the election, a series of protest rallies were organised in Yerevan by the opposition parties, alleging irregularities.

7. On 21 March 2003 the applicant participated in a rally in Yerevan which was part of a nationwide public demonstration. Following the demonstration the applicant returned to his home in the village of Karakert.

8. On 22 March 2003 two police officers from the Baghramyan Police Department (*ՀՀ ոստիկանության Բաղրամյանի բաժին*) visited the applicant at his home.

9. The applicant alleged that this visit had taken place at 7 a.m. The police officers told him that he was required to accompany them to the police station as the chief wished to see him regarding matters unrelated to the demonstration the day before.

10. The Government contested this allegation and submitted that the police officers had visited the applicant at 9 a.m. because they suspected him of having participated in an unauthorised demonstration the previous day.

11. It appears from the materials of the case that the applicant was asked by the police officers to accompany them to the police station. He showed resistance but was nevertheless taken to the police station.

12. According to the Government, at the police station the arresting police officers drew up a record of the applicant's arrest (*արձանագրության բերման ենթարկելու մասին*) in which the reasons for his arrest were indicated. This record was allegedly signed by the applicant.

13. In his application form, the applicant alleged that at the police station he had discovered that the real reason for his detention was his participation in the demonstration the previous day. Contrary to what he had been told, the chief of police did not want to see him. His requests to have a lawyer were ignored. In a later submission, the applicant alleged that the chief of police had in fact met him and told him that he would be detained since there were instructions from the Minister of the Interior to arrest temporarily all political activists.

14. According to a written statement (*արձանագրություն բացատրություն վերցնելու մասին*) made by the applicant at the police station, on 22 March 2003 he had participated in a rally in Yerevan and the same evening he had returned home to his village. The next morning at 9 a.m. the police officers had visited him at home and asked him to accompany them to the police station. An argument had erupted, during

which the applicant admitted having disobeyed the lawful orders of the police officers. The applicant had regretted his actions, asked for forgiveness and promised that it would never happen again.

15. The applicant alleged that he had made the above statement since the police officers had led him to believe that his arrest was not in relation to serious matters and that he would not face any serious consequences.

16. The Government contested the above allegations and submitted that the applicant had made the above statement voluntarily. The police officers had informed the applicant of his procedural rights and had advised him to avail himself of his right to have a lawyer but he had not wished to do so.

17. The police officers drew up a record of an administrative offence (*վարչական իրավախախտման արձանագրություն*) in which it was stated that the applicant "had used foul language and had maliciously disobeyed the lawful orders of the police officers". The applicant was charged under Article 182 of the Code of Administrative Offences (*Վարչական իրավախախտումների վերաբերյալ ՀՀ օրենսգիրք* – "the CAO"). The applicant's signature did not appear on this record.

18. About two hours after his arrest the applicant was brought before Judge S. of the Armavir Regional Court (*Արմավիրի մարզի առաջին ատյանի դատարան*).

19. Judge S., after a brief hearing, sentenced the applicant under Article 182 of the CAO to ten days of administrative detention. The judge's entire finding amounted to the following sentence:

> "On 22 March 2003 at 9 a.m. in the village of Karakert of the Armavir Region [the applicant] maliciously refused to obey the lawful order of the officers of the Baghramyan Police Department acting in pursuance of their duties of preserving public order; in particular, while being taken to the police station, he disobeyed the police officers, used foul language and prevented them from performing their duty."

20. According to the record of the court hearing, the hearing was held in public with the participation of the judge, a clerk and the applicant. The judge informed the applicant of his right to challenge the judge and the clerk and to have a lawyer. The applicant did not wish to lodge any challenges or to have a lawyer. The judge then proceeded with examination of evidence. The applicant submitted that the police officers of the Armavir Police Department had visited him at home at 9 a.m. that day and asked him to come to the police station. He had tried to find out why he was being taken to the police station but it turned out that he had used foul language. His attempts to find out the reasons remained unanswered. Thereafter, the judge examined the materials prepared by the police. No further evidence was produced or requests made by the applicant. The judge departed to the deliberation room, after which he returned and announced the decision.

21. According to the applicant, the hearing was conducted in the judge's office, without examination of any witnesses, and lasted only a few minutes.

No charges were presented prior to the hearing. The judge explained that he was in no position to help the applicant or to make any decision other than that which he had made as he was acting on instructions from higher authorities. He also explained that it was not possible to call a lawyer because he had many cases to examine and could not afford to spend more time on the applicant's case.

22. The applicant was taken to the Armavir Temporary Detention Facility at the Armavir Regional Department of Internal Affairs to serve his sentence.

23. The applicant alleged that, at the detention facility, he had been asked to sign the above record of an administrative offence without reading it, which he refused to do.

24. The Government contested this allegation and claimed that the applicant had actually signed this document while in police custody prior to the court hearing.

B. The applicant's detention

25. The applicant alleged, and the Government did not dispute, that at the Armavir Temporary Detention Facility he had been placed with nine other people in a cell measuring 7.5 sq. m. There were no beds in the cell so the detainees had to sleep on the floor. They had no bed linen, blankets or pillows.

26. On 24 March 2003 the applicant and three others were transferred to another cell, as a result of constant oral complaints. The applicant alleged, and the Government did not dispute, that the new cell also measured 7.5 sq. m and was designed for two persons. There were only two metal beds in the cell, each 40-50 cm wide, so the applicant had to share a bed with another detainee. There was no bed linen, blankets or pillows. Two days later, after repeated oral complaints, the applicant was given bedding which was in a very dirty condition. The water provided to the detainees was of such bad quality that he refused to drink it. He had to acquire mineral water from the outside, using the money that he had, with the help of the staff of the detention facility. Food was provided only once a day and it was always buckwheat of poor quality without salt.

27. The applicant further alleged – but the Government disputed – that while in detention he had developed an allergy resulting in a big swelling on his face which had continued to recur from time to time following his release. His health deteriorated as a result of his detention.

28. The applicant finally alleged that, during the entire stay at the detention facility, he had been prevented from having any contact with his family members and had not been permitted to receive newspapers or magazines.

29. On 31 March 2003 the applicant was released from detention after fully serving his sentence.

30. On 23 September 2003 the applicant was diagnosed with a chronic infection of unknown origin.

31. In May 2004 the applicant underwent a medical examination and was diagnosed with suspected tuberculosis of the left lung. According to a medical certificate of 9 August 2005, the applicant was suffering from liver problems.

II. RELEVANT DOMESTIC LAW

A. The Code of Administrative Offences

32. For a summary of the relevant provisions of the CAO see the judgment in the case of *Galstyan v. Armenia* (no. 26986/03, § 26, 15 November 2007). The provisions of the CAO which were not cited in the above judgment, as in force at the material time, provide:

Article 182: Maliciously disobeying a lawful order or demand of a police officer or a member of the voluntary police

> "Maliciously disobeying a lawful order or demand of a police officer or a member of the voluntary police made in the performance of his duties of preserving public order shall result in the imposition of a fine of between 50% and double the fixed minimum wage, or of correctional labour for between one and two months with the deduction of 20% of earnings or, in cases where, in the circumstances of the case, taking into account the offender's personality, the application of these measures would be deemed insufficient, of administrative detention not exceeding 15 days."

B. The Law on Conditions for Holding Arrested and Detained Persons (*«Ձերբակալված և կալանավորված անձանց պահելու մասին» ՀՀ օրենք*)

33. The relevant provisions of the Law, as in force at the material time, read as follows:

Section 13: Rights of arrested and detained persons

> "An arrested or detained person is entitled: ... (3) to lodge, himself or through his lawyer or lawful representative, applications and complaints alleging a violation of his rights and freedoms with the administration of the facility for arrested or detained persons, their superior authorities, a court, a prosecutor's office, the Ombudsman, the bodies of public administration and local self-governance, non-governmental unions and [political] parties, mass media and international institutions and organisations protecting human rights and freedoms."

Section 20: Ensuring the material and living conditions of arrested and detained persons

"...The living space afforded to arrested and detained persons must comply with the building and sanitary-hygienic norms established for general living spaces. The area of the living space afforded to arrested and detained persons shall not be less than 2.5 sq. m for each individual.

Arrested and detained persons must be provided with individual bedding and bed linen."

C. Decree no. 8 of the Chief of Armenian Police of 11 September 2003 Approving the Internal Rules of Facilities under the Armenian Police for Holding Arrested Persons

34. The relevant provisions of the Decree read as follows:

"Special sections of the [facilities for holding arrested persons] shall be reserved for persons who have been subjected to administrative detention for periods prescribed by [the CAO]..."

III. RELEVANT REPORTS CONCERNING CONDITIONS OF DETENTION

A. The Report of the Committee for the Prevention of Torture (CPT) on its Visit to Armenia in 2002 – CPT/Inf(2004)25

35. The relevant parts of the Report read as follows:

"4. Conditions of detention

a. introduction

43. At the outset, the CPT wishes to highlight the criteria which it applies when assessing police detention facilities.

All police cells should be clean, of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (for example, a chair or bench) and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets.

Persons in custody should be able to satisfy the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (that is, something more substantial than a sandwich) every day.

Persons held in custody for 24 hours or more should, as far as possible, be offered one hour of outdoor exercise every day.

b. temporary detention centres

44. During the visit, the CPT's delegation visited temporary detention centres in Yerevan, Akhurian, Hrazdan, Maralik and Sevan. Establishments of this type are used to hold two categories of detainees: criminal suspects and persons under administrative arrest.

Conditions of detention in the temporary detention centres visited varied from acceptable (at the Hrazdan Department of Internal Affairs) to poor (e.g. at the Akhurian and Sevan Departments of Internal Affairs).

45. As regards occupancy levels, a consultation of registers and the number of sleeping places per cell suggested that the minimum standard of 2.5 m² of living space per person, as stipulated by the Law on [Conditions for Holding Arrested and Detained Persons], was respected as concerns criminal suspects. However, the CPT must add that this minimum standard is too low. As concerns the cells for administrative detainees, the information gathered during the visit indicated that conditions could become extremely cramped, e.g. up to 6 detainees in a cell of 9 m² in Hrazdan and Sevan.

All the centres visited presented deficiencies concerning the in-cell lighting and ventilation. With the exception of the Hrazdan centre, access to natural light was poor (small windows, sometimes - as in Yerevan - covered by metal shutters) or inexistent (e.g. in Akhurian). Artificial lighting was invariably dim, with some cells (e.g. in Yerevan, Akhurian and Maralik) submerged in near darkness. As to ventilation, it left something to be desired at Yerevan and Sevan.

As to the state of repair and hygiene of the detention areas, it ranged from quite acceptable at the Hrazdan Department of Internal Affairs to poor at the Sevan establishment. Cells at the Temporary detention centre in Yerevan were in a reasonably good state of repair; however, their level of cleanliness left something to be desired. Detention areas in Akhurian and Maralik were dilapidated but clean.

46. Cells were furnished with beds or wooden sleeping platforms. The delegation noted that mattresses, sheets, pillows and blankets were available for criminal suspects at all the temporary detention centres visited; however, this was not the case for administrative detainees.

The delegation did not hear any complaints from persons who were - or had recently been - detained at the centres visited as regards access to a toilet. However, with the notable exception of the Hrazdan Department of Internal Affairs, the communal toilet and washing facilities were dilapidated and dirty.

The centres in Yerevan and Hrazdan possessed shower facilities, which could apparently be used by newly-arrived detainees (upon recommendation of a feldsher/doctor) and by those administrative detainees who stayed in the respective establishments for longer than a week. In both centres, the shower facilities were in an acceptable state of repair and cleanliness, and hot water was available. However, the only personal hygiene item that was distributed to detainees was a small piece of soap.

47. According to information provided by police officers in the majority of the temporary detention centres visited, detainees were offered food three times per day, including one hot meal. However, this was not the case at the Sevan Department of Internal Affairs, where food was only delivered once per day, reportedly due to the limited budget set aside for this purpose (320 AMD - i.e. some 50 euro cents - per detainee per day). In this situation, the provision of food was to a large extent ensured by detainees' families. Detained persons without family contacts had to rely on the generosity of other detainees or individual police officers for food.

48. All the temporary detention centres visited possessed outdoor exercise areas, where detainees were apparently allowed to take exercise for one hour per day (in the case of women and juveniles - for two hours per day). However, at the Temporary Detention Centre of the City Department of Internal Affairs in Yerevan, the delegation was informed that detainees could be deprived of outdoor exercise as a form of punishment for violation of the centre's internal regulations.

49. The CPT recommends that the Armenian authorities take steps at temporary detention centres to:

- ensure that all detainees are offered adequate living space; the objective should be at least 4 m² per person;

- provide adequate in-cell lighting (including access to natural light) and ventilation;

- maintain the cells and common sanitary facilities in a satisfactory state of repair and hygiene;

- ensure that all detainees (including those held for administrative violations) are offered a mattress and blankets at night;

- ensure that administrative detainees are able to take a hot shower at least once a week during their period of detention;

- ensure that all detainees are offered food - sufficient in quantity and quality - at normal meal times;

- put an end to deprivation of outdoor exercise as a disciplinary punishment."

B. The CPT Report on its Visit to Armenia in 2004 – CPT/Inf(2006)38

36. The relevant part of the Report reads as follows:

"4. Conditions of detention

a. Temporary detention centre of the Department of Internal Affairs of the City of Yerevan

20. Conditions of detention in this facility remained basically the same as those observed during the 2002 visit, i.e. poor. One positive change was that persons under

administrative arrest were now provided with bedding (pursuant to Order No. 8 of the Head of the National Police of 20 August 2003). Further, the delegation was informed that the food entitlement for detainees had been increased by Government decision of May 2003. Otherwise, no refurbishment or major repairs had taken place since the previous visit.

Consequently, the CPT reiterates the recommendations made in paragraph 49 of the report on the 2002 visit, in particular as regards living space, in-cell lighting, ventilation, state of repair and hygiene."

C. The CPT Report on its Visit to Armenia in 2006 – CPT/Inf(2007)47

37. The relevant parts of the Report read as follows:

"4. Conditions of detention

a. police holding areas

28. At the beginning of the 2006 visit, the delegation was informed that, pursuant to Order NK–328–NG of the President of the Republic of Armenia, dated 28 December 2004, a large-scale refurbishment programme had been initiated in all police holding areas. The CPT welcomes this. It should also be noted that a recent amendment to the [Law on Conditions for Holding Arrested and Detained Persons] increased the official standard of living space per detained person in police holding areas to 4 m². This can be considered as acceptable when applied to multi-occupancy cells; however, 4 m² is not an adequate size for a single occupancy cell.

29. During the visit, the delegation could observe the impact of the above-mentioned programme. Some of the police holding areas (e.g. in Charentsavan, Gavar and Hrazdan) were still undergoing refurbishment and were to reopen shortly. As regards the already refurbished holding areas, conditions in them were overall of a high standard."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained that the conditions of his detention were incompatible with the requirements of 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

39. The Government submitted that the applicant had failed to exhaust the domestic remedies. It was open to him to complain about the conditions of his detention under section 13 of the Law on Conditions for Holding Arrested and Detained Persons, which he had failed to do.

40. The applicant submitted that as he had not had the benefit of legal advice during his detention he had not been aware of any appeal procedure against conditions of detention, since bringing such complaints was not general practice. Thus, no appeal procedure was sufficiently accessible to him. In any event, the existence of an appeal procedure in law did not absolve the authorities from their obligation to ensure adequate conditions of detention.

41. The Court reiterates that the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, and *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006).

42. The Court further emphasises that Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism. Moreover, the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically. In reviewing whether the rule has been observed, it is essential to have regard to the existence of formal remedies in the legal system of the State concerned**,** the general legal and political context in which they operate**,** as well as the particular circumstances of the case and whether the applicant did everything that could reasonably be expected in order to exhaust available domestic remedies (ibid.).

43. In the present case, the Government claimed that the applicant had had a remedy at his disposal, namely that he could have lodged a complaint under section 13 of the Law on Conditions for Holding Arrested and Detained Persons. The Court observes, however, that the Government did not produce any evidence to demonstrate that the remedy relied on was sufficient and effective. They failed even to specify to which of the numerous authorities mentioned in that provision the applicant was supposed to apply and what specific measures could have been taken by

them to provide redress for the applicant's complaints, especially taking into account that the issues raised by the applicant were apparently of a structural nature and did not only concern the applicant's personal situation (see the relevant CPT reports at paragraphs 35-37 above). The Government's objection as to non-exhaustion must therefore be dismissed.

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

B. Merits

45. The Government submitted that there had been no breach of the requirements of Article 3. The applicant had failed to submit any proof of damage caused to his mental or physical health. His allegations that his health had deteriorated as a result of his detention were not supported by any evidence. Furthermore, access to medication had been provided for the applicant during his detention. Finally, the authorities did not have the intention of humiliating or debasing the applicant: he had simply been kept in the general conditions which prevailed in the prison. The Government also added that substantial changes have taken place in the penitentiary system in Armenia in terms of both improving the general conditions and the regime applied within prisons notwithstanding the existing socio-economic problems.

46. The applicant submitted that the conditions of his detention at the Armavir Temporary Detention Facility amounted to degrading treatment within the meaning of Article 3. He further argued that he had in fact submitted medical proof that his health had deteriorated as a result of his conditions of detention.

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

48. According to the Court's case-law, 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, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

49. Treatment has been held by the Court to be "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). Furthermore, in considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, pp. 2821-22, § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III). In order for a punishment or treatment associated with it to be "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

50. Measures depriving a person of his liberty may often involve such an element. However, it is incumbent on the State to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

51. In the present case, the applicant was kept in detention for a total of ten days. Initially he was kept for about two days in a cell measuring 7.5 sq. m with nine other inmates, in other words, he was afforded about 0.75 sq. m of personal space. In this respect the applicant's situation was even worse than that in the *Kalashnikov* case, in which the applicant had been confined to a space measuring about 0.9-1.9 sq. m. In that case the Court held that such a severe degree of overcrowding raised in itself an issue under Article 3 of the Convention (see, among other authorities, *Kalashnikov*, cited above, §§ 96-97). Furthermore, there were no sleeping facilities or bedding in the cell.

52. The Court notes that on the third day of his detention the applicant was transferred to another cell which led to a slight improvement in his detention conditions in terms of overcrowding: the new cell, which was the same size as the previous one, was shared by a total of four inmates, thus affording the applicant about 1.8 sq. m of personal space. Even so, this

space was still comparable to the one to which the applicant in the above *Kalashnikov* case had been confined. Furthermore, it was significantly smaller than the 4 sq. m minimum requirement for a single inmate in multi-occupancy cells according to the CPT standards (see the relevant CPT reports at paragraphs 35-37 above) and even smaller than the 2.5 sq. m minimum required at the material time under the domestic law. Nothing suggests that in either case the applicant was allowed any out-of-cell activities that could compensate for this serious lack of space (see *Cenbauer v. Croatia*, no. 73786/01, § 49, ECHR 2006-III; *Malechkov v. Bulgaria*, no. 57830/00, § 141, 28 June 2007, and, by contrast, *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004). Furthermore, while the second cell provided some sleeping facilities, there were half as many beds as inmates, so the inmates were forced to share beds designed for single use. Moreover, initially no bed linen or blankets were provided and those provided after repeated complaints were in an insanitary condition.

53. The Court further notes that the water provided to the detainees was allegedly of undrinkable quality and food was provided only once per day. The Court reiterates that it is unacceptable for a person to be detained in conditions in which no provision has been made for meeting his or her basic needs (see, *mutatis mutandis*, *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, §§ 106, ECHR 2008 (extracts), and *Shchebet v. Russia*, no. 16074/07, § 93, 12 June 2008).

54. The Court observes that the Government did not contest the applicant's account of the conditions of his detention (see paragraphs 25 and 26 above). It further observes that the applicant's description corresponds to a large extent to the findings of the CPT which, during its 2002 visit to Armenia, inspected a number of police temporary detention centres where administrative detainees were held (see for other examples of the Court's reliance on the CPT reports, *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005, and *Ostrovar v. Moldova*, no. 35207/03, § 80, 13 September 2005). Even if this visit predated the circumstances of the present case, it appears from the CPT materials that no significant improvements had taken place in this field before a large-scale refurbishment programme was launched in December 2004. The Court therefore does not have reasons to doubt the veracity of the applicant's submissions.

55. The Court also notes that the length of the applicant's detention was relatively short, amounting to a total of ten days. However, it observes that conditions of detention of comparable and even of much shorter length have been previously found to be incompatible with the requirements of Article 3 (see *Riad and Idiab*, cited above, §§ 100-111, in which the applicants were kept in detention for fifteen and eleven days, and *Fedotov v. Russia*, no. 5140/02, §§ 66-70, 25 October 2005, in which the applicant was detained for twenty-two hours with no food and water or access to a toilet).

Therefore, while the length of a detention period may be a relevant factor in assessing the gravity of suffering or humiliation caused to a detainee by the inadequate conditions of his detention (see, for example, *Kalashnikov*, cited above, § 102, and *Dougoz*, cited above, § 48), the relative brevity of such a period alone will not automatically exclude the treatment complained of from the scope of Article 3 if all other elements are sufficient to bring it within the scope of that provision.

56. The Court agrees with the Government that there is not sufficient proof in the materials of the case linking the health problems experienced by the applicant to his stay at the detention facility. However, it considers that, while evidence of damage to a detainee's health caused by the conditions of his detention may be a relevant factor to be considered (see, for example, *Labzov v. Russia*, no. 62208/00, § 47, 16 June 2005), the existence of such consequences is by no means a precondition for finding a violation of Article 3 (see, for example, *Dougoz*, cited above, §§ 45-49; *Cenbauer*, cited above, §§ 45-53; *Shchebet*, cited above, §§ 86-96, and *Fedotov*, cited above, §§ 66-70).

57. Against this background, and having regard to the cumulative effects of the conditions of the applicant's detention as described above, the Court considers that the hardship the applicant endured appears to have exceeded the unavoidable level inherent in detention and finds that the resulting suffering and feelings of humiliation and inferiority went beyond the threshold of severity under Article 3 of the Convention.

58. As regards the Government's submission that the authorities had no intention to debase him, as already indicated above, the absence of any purpose to humiliate or debase the victim cannot exclude a finding of a violation of Article 3 (see paragraph 49 above). The Court therefore concludes that the conditions of the applicant's detention amounted to degrading treatment within the meaning of Article 3.

59. Accordingly, there has been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ARREST

60. The applicant complained that he had not been informed of the legal or factual grounds for his arrest. He invoked 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."

Admissibility

61. The Government submitted that the applicant had been informed by the police officers about the reasons for his arrest. Furthermore, on arrival at the police station a record of arrest and a record of an administrative offence had been drawn up, in which the reasons for the applicant's arrest were indicated. These records had been signed by the applicant. Therefore the applicant had been informed promptly about the reasons for his arrest and his denial of this fact contradicted the materials of the case.

62. The applicant submitted that he had never been informed of the legal or factual grounds for his arrest. Furthermore, the existence of written records did not absolve the authorities from the necessity of giving reasons for arrest orally.

63. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 19, § 40, and *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 31, § 72).

64. In the present case, it is not clear whether any reasons were given to the applicant by the arresting officers at the time of his arrest. Furthermore, the Government have failed to submit a copy of the record of arrest in which the reasons for the applicant's arrest were allegedly indicated and which was allegedly signed by the applicant. The Court further notes that, contrary to the Government's claim, the applicant's signature does not appear on the record of an administrative offence which contained the charge against the applicant, nor is there any indication that the applicant was presented with this document but refused to sign it. On the other hand, it is evident from the written statement made by the applicant at the police station following his arrest that he was aware of the charge against him and consequently of the reasons why he had been brought to the police station. In such circumstances, the applicant's assertion to the contrary is not supported by the materials of the case.

65. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. THE GOVERNMENT'S OBJECTION AS TO NON-EXHAUSTION IN CONNECTION WITH THE APPLICANT'S CONVICTION

66. The Government claimed that the applicant had failed to exhaust the domestic remedies in respect of the decision of 22 March 2003 by not lodging an appeal with the President of the Criminal and Military Court of Appeal under Article 294 of the CAO.

67. The applicant contested the Government's objection.

68. The Court notes that it has already examined this issue and found that the review possibility provided by Article 294 of the CAO was not an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Galstyan*, cited above, § 42). The Government's preliminary objection must therefore be rejected.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S ADMINISTRATIVE DETENTION

69. The applicant complained under Article 5 §§ 1, 3 and 4 of the Convention about his administrative detention. The relevant provisions of Article 5 read as follows:

> "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.

...

3. Everyone arrested or detained in accordance with the provisions of paragraph1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trail within a reasonable time or to release pending trial...

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."

Admissibility

70. The Government submitted that the applicant's administrative detention had been permissible under Article 5 § 1 (a) of the Convention as "the lawful detention of a person after conviction by the competent court". His case had been examined by the trial court, which was the sole competent authority to do so. The trial had been conducted in compliance with the guarantees of Article 5 § 3. As to the judicial supervision required by Article 5 § 4, this had been incorporated in the trial court's decision.

71. The applicant submitted that his administrative detention was arbitrary in violation of Article 5 § 1. He further submitted that the manner in which the trial was conducted fell short of the requirements of Article 5 §§ 3 and 4.

72. The Court observes that it has already examined a similar complaint under Article 5 § 1 and found that the administrative detention had been imposed on the applicant after a "conviction by a competent court" within the meaning of Article 5 § 1 (a) and in accordance with a procedure prescribed by law (see *Galstyan*, cited above, §§ 47-49). It sees no reasons to depart from that finding in the present case. The Court further reiterates that the guarantees of Article 5 § 3 apply only to detention imposed under Article 5 § 1 (c) (see *Ječius v. Lithuania*, no. 34578/97, § 75, ECHR 2000-IX). It follows that the guarantees of that provision are not applicable to the applicant's administrative detention, which, as already indicated above, was imposed under Article 5 § 1 (a). Lastly, the Court reiterates that, where a sentence of imprisonment is pronounced after a "conviction by a competent court" within the meaning of Article 5 § 1 (a), the supervision required by Article 5 § 4 is incorporated in that decision (see *Galstyan*, cited above, § 51). However, as already indicated above, no issue arises in the present case under Article 5 § 1 (a).

73. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

74. The applicant made several complaints about the administrative proceedings against him under Article 6 §§ 1 and 3 (a)-(d) of the Convention, which, in so far as relevant, provide:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal...
>
> ...
>
> 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;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

A. Admissibility

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

B. Merits

76. The Government submitted that the applicant had had a fair and public hearing. He had failed to submit any proof in support of his allegation that the judge had not been impartial. The applicant had been provided with an opportunity to call witnesses, submit evidence and to lodge requests and challenges, which he had failed to do. The judge had advised the applicant to avail himself of his right to have a lawyer but he did not wish to do so. The applicant's argument that the materials of the administrative case against him had not been revealed to him prior to the hearing contradicted the materials of the case: both the record of arrest and

the record of an administrative offence had been signed by the applicant after he was taken to the police station. Thus, taking into account that the applicant had signed the record of an administrative offence without any objections, had refused to have a lawyer, had not lodged any requests and had not availed himself of other procedural rights, the police officers had considered two hours to be sufficient for the preparation of the applicant's defence.

77. The applicant submitted that the trial had not been fair and the tribunal had not been independent and impartial. Furthermore, it had not been public since it had been held in camera in a judge's office. The speed with which the proceedings had been conducted, the failure to provide him with adequate time and facilities to prepare his defence and the fact that he had been denied the right to call or examine witnesses or give evidence in his defence had put him at a significant disadvantage vis-à-vis his opponent. The materials of the case against him had not been revealed to him prior to the hearing and the court had failed to provide a reasoned decision. The hearing had taken place immediately after his questioning at the police station and he had been denied access to a lawyer prior to and during the trial.

78. The Court notes from the outset that similar facts and complaints have already been examined in a number of cases against Armenia, in which the Court found a violation of Article 6 § 3 (b) taken together with Article 6 § 1 (see *Galstyan*, cited above, §§ 86-88, and *Ashughyan v. Armenia*, no. 33268/03, §§ 66-67, 17 July 2008). The circumstances of the present case are practically identical. The administrative case against the applicant was examined in an expedited procedure under Article 277 of the CAO. The applicant was similarly taken to and kept in a police station – without any contact with the outside world – where he was presented with a charge and in a matter of hours taken to a court and convicted. The Court therefore does not see any reason to reach a different finding in the present case and concludes that the applicant did not have a fair hearing, in particular on account of not being afforded adequate time and facilities for the preparation of his defence.

79. There has accordingly been a violation of Article 6 § 3 taken together with Article 6 § 1 of the Convention.

80. In view of the finding made in the preceding paragraph, the Court does not consider it necessary to examine also the other alleged violations of Article 6.

VI. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 7

81. The applicant complained under Article 13 of the Convention that he had no right to contest the decision of 22 March 2003. The Court considers

it necessary to examine this issue under Article 2 of Protocol No. 7 which, in so far as relevant, reads as follows:

> "1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law."

A. Admissibility

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

B. Merits

83. The Government submitted that the applicant had had the right to have his conviction reviewed, this right being prescribed by Article 294 of the CAO.

84. The applicant submitted that all the legal provisions regarding the right to appeal were inadequate and confused.

85. The Court notes that the applicant in the present case was convicted under the same procedure as in the above-mentioned case of *Galstyan*, in which the Court concluded that the applicant did not have at his disposal an appeal procedure which would satisfy the requirements of Article 2 of Protocol No. 7 (see *Galstyan*, cited above, §§ 124-27). The Court does not see any reasons to depart from that finding in the present case.

86. Accordingly, there has been a violation of Article 2 of Protocol No. 7.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION AND ITS PROTOCOLS

87. Lastly, the applicant complained that his conviction violated his rights guaranteed by Articles 10, 11 and 14 of the Convention and Article 3 of Protocol No. 1 and that he had not been allowed any contact with his family while in detention, in violation of the guarantees of Article 8 of the Convention.

88. 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.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

90. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

91. The Government submitted that, if the Court were to find a violation, that would be sufficient just satisfaction. In any event, the amount claimed was excessive.

92. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of being sanctioned through unfair proceedings and having no possibility to appeal against this sanction, which resulted in his detention for a period of ten days in degrading conditions. Ruling on an equitable basis, it awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

93. The applicant also claimed USD 3,666 (approximately EUR 2,495) and 6,809.98 pounds sterling (GBP) (approx. EUR 8,445) for the costs and expenses incurred before the Court. These claims comprised:

(a) USD 3,600 for the fees of his domestic lawyer (35 and 18 hours at USD 150 and 100 per hour respectively);

(b) USD 66 for translation costs;

(c) GBP 6,724.98 for the fees of his three United Kingdom-based lawyers, including two KHRP lawyers and one barrister (totals of about 18 and 40 hours at GBP 150 and 100 per hour respectively); and

(d) GBP 85 for administrative costs incurred by the KHRP.

The applicant submitted detailed time sheets stating hourly rates in support of his claims.

94. The Government submitted that the claims in respect of the domestic and foreign lawyers were not duly substantiated with documentary proof, since the applicant had failed to produce any contracts certifying that there was an agreement with those lawyers to provide legal services at the alleged hourly rate, while the submitted time sheets and invoice lacked any signatures or seals. Furthermore, the applicant had used the services of an excessive number of lawyers, despite the fact that the case was not so complex as to justify such a need. Moreover, the hourly rate allegedly

charged by the domestic lawyer was excessive. As to the cost of translating the application form and the enclosed documents, these expenses were not necessary since it was open to the applicant to submit such documents in Armenian.

95. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes at the outset that no invoice has been submitted to substantiate the translation costs. As regards the lawyers' fees, it considers that not all the legal costs claimed were necessarily and reasonably incurred, including some duplication in the work carried out by the foreign and the domestic lawyers, as set out in the relevant time sheets. Furthermore, a reduction must also be applied in view of the fact that a substantial part of the initial application and communicated complaints was declared inadmissible. Making its own estimate based on the information available and deciding on an equitable basis, the Court awards the applicant EUR 3,000 in respect of costs and expenses, to be paid in pounds sterling into his representatives' bank account in the United Kingdom.

C. Default interest

96. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 and Article 6 §§ 1 and 3 (a)-(d) of the Convention and Article 2 of Protocol No. 7 admissible, and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 6 § 1 taken together with Article 6 § 3 (b) of the Convention in that the applicant did not have a fair hearing, in particular on account of the fact that he was not afforded adequate time and facilities for the preparation of his defence in the administrative proceedings against him;

4. *Holds* that there is no need to examine the other complaints under Article 6 of the Convention;

5. *Holds* that there has been a violation of Article 2 of Protocol No. 7;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into his representatives' bank account in the United Kingdom;

(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;

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

Done in English, and notified in writing on 2 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President

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

J.C.M.
S.H.N.

CONCURRING OPINION OF JUDGE FURA-SANDSTRÖM

The Court found a violation of Article 6 paragraph 1 taken together with Article 6 paragraph 3 (b) of the Convention in that the applicant did not have a fair hearing, in particular on account of the fact that he was not afforded adequate time and facilities for the preparation of his defence (paragraph 78) following the case-law established in the cases of *Ashughyan* and *Galstyan.* While accepting this approach, I would have preferred to examine separately the complaints relating to the lack of legal assistance. The applicant submitted having been denied access to a lawyer prior to and during the trial (paragraph 78). For the same reasons expressed in my partly dissenting opinion in the *Galstyan* case, to which I refer, I find that there has been a violation of Article 6 paragraph 1 taken together with Article 6 paragraph 3 (c) also in this respect.