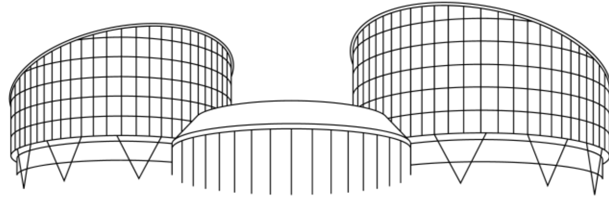

THIRD SECTION

DECISION

Applications nos. 44765/08 and 10607/10
Vardan JHANGIRYAN against Armenia

The European Court of Human Rights (Third Section), sitting on 11 December 2012 as a Chamber composed of:
Josep Casadevall, *President,*
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above applications lodged on 16 July 2008 and 15 January 2010 respectively,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in both cases, Mr Vardan Jhangiryan, is an Armenian national, who was born in 1960 and lives in Yerevan. He is represented before the Court by Ms L. Sahakyan and Mr E. Varosyan, lawyers practising in Yerevan, and Mr A. Ghazaryan, a non-practising lawyer.

A. The circumstances of the case

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

1. Background to the case

3. On 19 February 2008 a presidential election was held in Armenia. After the election, the opposition led by the main opposition candidate, Levon Ter-Petrosyan, started to hold mass protest rallies and demonstrations in the Republic.

4. On 22 February 2008 the applicant's brother, G.J., who was Deputy Prosecutor General at that time, made a speech at an opposition rally held in Yerevan. The next day, the incumbent President issued a decree dismissing him from the post of Deputy General Prosecutor.

2. Criminal proceedings against the applicant

(a) The applicant's arrest, his alleged ill-treatment by police officers and the provision of medical assistance during the arrest

5. As it appears from a record of bringing a person to the police, on 23 February 2008, at 11.30 p.m., police officers S.M. and A.M. of the General Police Department for the Fight against Organised Crime (hereafter, the Police Department) took the applicant to the Police Department on suspicion of putting up resistance to police officers.

6. On the same day the police announced on their website that, in accordance with operative information received by the Police Department, persons driving in a BMW X5 car (with indication of the car number-plate) and a VAZ 21010 car (with indication of the car number-plate) were armed and intended to destabilise the situation in the Republic. At 11.00 p.m. on 23 February 2008 police officers stopped the above-mentioned cars at the Argavand intersection in order to conduct an inspection (hereafter the police operation). During the inspection, the persons sitting in the cars put up resistance during which police officer R.M. accidentally fired shots from his service gun inflicting light injuries on two police officers and the applicant who had put up resistance. The persons who were in those cars, namely the applicant, G.J., K.H. and L.P. were brought to the Police Department. A CZ-75 pistol with cartridges was found in the G.J.'s possession; a PSM-type pistol with cartridges was found in the applicant's possession and a Makarov-type pistol with cartridges was found in K.H.'s possession. As a result of the inspection of the cars, a hunting rifle and a Browning-type pistol with cartridges were discovered, as well as a dagger, handcuffs and a bullet-proof vest.

7. It appears that there were two more persons in the car accompanying the applicant, namely A.S. and S.H., who were not taken to the Police Department.

8. The applicant alleges that in reality at around 10.00 p.m. on 23 February 2008 G.J. and he were returning to Yerevan in a BMW X5 car driven by him. When he stopped at the red light at the Argavand intersection

they had been attacked by a group of masked and armed persons. Those persons crashed their unmarked vehicle, a Ford van, into the front of their car blocking their way, got out of the van and, firing shots from their guns, surrounded their car. At the same time they also surrounded the second car driven by persons accompanying them. G.J. had left the car, introduced himself and asked the persons what they wanted. The masked persons had then seated G.J. in their Ford van. In the meantime, those persons had struck several blows to the driver's side door window and broken it. V.J. has serious problems moving, especially sitting down and standing up, as he suffers from spinal tuberculosis. For this reason he was wearing a medical corset. As he opened the door of the car, the persons who had surrounded his car had hit him in the face with a gun butt, dragged him out and thrown him to the ground, in a kneeling position, disregarding G.J.'s warnings that his brother suffered from a spine disease. In the meantime, the police officers had fired several shots, one of which injured the applicant. Two police officers, namely G.M. and T.K., were also injured by the shots. Thereafter, shooting also continued near the Ford van. Police officer R.M. who, according to the police, accidentally fired two shots injuring three persons, was later diagnosed with astheno-neurotic syndrome. Both during the investigation and at the trial R.M. stated that there was no need to fire shots and that he did not understand how the shots had been fired. Then the applicant and G.J., as well as G.J's driver L.P. and assistant K.H. who were in the accompanying car, had been unlawfully brought to the Police Department whose police officers were carrying out the operation. According to official sources, the police operation was carried out at around 11.30 p.m. but in reality the operation was carried out at 10.00 p.m. This is confirmed by the fact that earlier, at 10.44 p.m. Regnum News Agency had already published a press release stating that G.J. and he had been abducted from the Argavand intersection at around 10.00 p.m. on 23 February 2008 by unknown masked persons. A similar press release was published by A1+ News Agency at 11.19 p.m. In the lobby of the administrative building of the Police Department G.J. and he had been beaten by three persons of the special task unit who threw them to the ground and started hitting and kicking them on different parts of their bodies. G.J., seeing his brother's helpless and blood-stained condition, had asked the police officers not to hit him because of the spine disease. However, the police officers did not stop but, on the contrary, started to beat him more vigorously, aiming at the spine. As a result, both G.J. and he sustained various bodily injuries. L.P. and K.H. witnessed the beatings and later testified about them. As a consequence of the violence committed by the police officers, he and his brother sustained numerous bodily injuries. Thereafter, from 10.00 p.m. on 23 February 2008 until about 12.50 a.m. on 24 February 2008 he was kept in the Police Department. As his firearm wound was bleeding the police

officers placed thick layers of paper on his chair to try to conceal the blood stains.

9. It appears that on 24 February 2008, at 12.50 a.m., the applicant was transferred to Yerevan City Hospital where it was found that the applicant had received a perforating firearm injury to the buttocks. It further appears that the wound was disinfected and dressed, after which the applicant was taken back to the Police Department.

10. On 24 February 2008 criminal proceedings were instituted under Article 316 § 2 of the Criminal Code for using violence, dangerous for life and limb, against the police officers by the applicant.

11. On the same date, at 2.00 a.m., a record of the applicant's arrest was drawn up, according to which the applicant had been arrested on suspicion of using violence, dangerous for health, against a police officer. It appears that the applicant was then questioned as a suspect.

12. According to the applicant, thereafter, until 9 a.m. on 24 February 2008 he was kept in one of the offices of the Police Department. Throughout the time he was kept in that room, his wound was bleeding and his condition was deteriorating. The police officers, seeing that his health was deteriorating, transferred him to the Police Hospital.

13. It appears that on 9 a.m. on 24 February 2008 the applicant was admitted to the Police Hospital. The applicant alleges that in the hospital they took off his medical corset, which he needed in order to move. Furthermore, during the two days of his stay in the hospital, they refused to give him food and water.

(b) The applicant's two forensic medical examinations

14. On 27 February 2008 investigator M. decided that a forensic medical examination of the applicant should be made. It appears from the investigator's decision that the purpose of the forensic examination was to clarify the circumstances in which the applicant had received bodily injuries during the police operation on 23 February 2008.

15. On 29 February 2008 the applicant's forensic medical examination was carried out in the Hospital for Convicts and various bodily injuries were discovered. In particular, the forensic medical report, as issued on 21 March 2008, stated as follows:

> "The bodily injuries sustained by [the applicant], i.e. the penetrating firearm-bullet injury around the left side of the buttocks, with damage to the hypodermic tissue; haemorrhage to the left of the eye socket, the back side of the right half of the chest, both sides of the buttocks, ... [the lower part] of the left thigh and [the upper part] of the crura; a wound from a blow around the left eyebrow; and scratches on the head and the left crus were inflicted in the following way: the penetrating firearm injury was inflicted by a shot fired from a firearm charged with a bullet, while the other injuries were inflicted using blunt objects..., causing medium-gravity damage, with lasting deterioration of health... . [The applicant] suffers from tuberculous spondylitis of the 8th and 9th thoracic vertebrae..."

16. It appears from the report that the applicant, told the doctor that he had been injured during the police operation as he had been hit in the face with a gun butt, taken out of the car, thrown to the ground and beaten.

17. It appears that on 26 March 2008 a commission forensic medical examination was ordered to establish from what disease the applicant was suffering. According to the corresponding report, apparently issued on 7 April 2008, the following forensic medical conclusion was made:

> "[The applicant] suffers from tuberculous spondylitis of the 7th, 8th and 9th thoracic vertebrae, and of the 2nd, 3rd, and 4th lumbar vertebrae, sustained in the past and treated, and currently in acute condition. The mentioned illness is considered a grave one and requires long-term in-patient treatment under strict bed rest in a specialised clinic, and with additional care."

(c) The applicant's motions seeking to be recognised as a victim

18. On 17 April 2008 the applicant filed a motion with the investigating authority alleging that he had been beaten and injured by police officers during the police operation and seeking to be recognised as a victim. In substantiation of his allegation the applicant referred to the results of the forensic medical examination of 29 February 2008.

19. On 18 April 2008 investigator H. decided to postpone the examination of the motion until the establishment of the circumstances necessary for its determination.

20. On 13 June 2008 the applicant together with G.J. lodged a motion with the investigating authority seeking to be recognised as a victim. In addition to his allegation of ill-treatment during the police operation, the applicant as well as G.J. claimed that they had been beaten by police officers in the lobby of the Police Department where they had been brought following their arrest. In substantiation, the applicant referred to the results of the forensic medical examination of 29 February 2008 and the fact that on 27 February 2008 G.J., during the court examination of the investigator's motion seeking to detain him on remand, stated that he and the applicant had been beaten in the lobby of the Police Department.

21. On 16 June 2008 investigator H. informed the applicant and G.J. in a letter that the investigation into the episode of police officer R.M. injuring the applicant and two police officers during the police operation, as well as into G.J.'s allegation of ill-treatment in the lobby of the Police Department, was still ongoing and that a corresponding decision would be taken after clarifying the circumstances essential for determining the case and the motion.

22. On 4 July 2008 the applicant and G.J. complained to the General Prosecutor's Office seeking to oblige investigator H. to examine the motion of 13 June 2008 and to be recognised as victims.

23. On 16 July 2008 the General Prosecutor's Office informed the applicant and G.J. in a letter that their motion seeking to be recognised as

victims was not based on the requirements of the Code of Criminal Procedure since they already had the status of accused persons in the criminal proceedings. It was also indicated that the investigation into the allegation of ill-treatment of the applicant and G.J. was still ongoing.

24. On 12 August 2008 the applicant and G.J. lodged a complaint with the Kentron and Nork-Marash District Court of Yerevan seeking to oblige investigator H. to recognise them as victims, which was dismissed by the District Court on 26 August 2008 for the same reasons as those indicated in the letter of the General Prosecutor's Office of 16 July 2008.

25. In the meantime, on 13 August 2008 investigator H. decided not to carry out criminal prosecution in relation to the applicant's and G.J.'s allegation of ill-treatment in the Police Department. In particular, in the decision it was stated that, despite the fact that on 27 February 2008 G.J. alleged before the court that he and the applicant had been ill-treated in the Police Department, he had subsequently refused to give any testimony in that respect. During the applicant's trial L.P. and K.H. stated that they had witnessed the applicant's and G.J.'s beatings as they were brought to the Police Department on 23 February 2008 at the same time as the applicant and G.J. However, neither L.P. nor K.H. had mentioned this during the investigation and failed to give a valid reason for not doing so. As to the applicant, no allegation of his and his brother's ill-treatment had been made by him during his questioning as a suspect on 24 February 2008. Furthermore, after making such an allegation before the trial court on 6 August 2008, the applicant refused to answer any questions posed to him by the prosecutor in that respect. Similarly, the applicant refused to make any statements after being summoned to the investigating authority to testify in relation to his allegation of ill-treatment.

26. The investigator's decision also mentioned the names of twenty police officers of the Police Department who were questioned and denied the allegation of ill-treatment. The police officers also stated that L.P. and K.H. had been brought separately to the Police Department and could not have seen the applicant and G.J. in the lobby of the police building.

27. On 23 August 2008 the applicant and G.J. lodged a complaint with the General Prosecutor's Office seeking to cancel the decision of 13 August 2008, which was dismissed by the latter on 27 August 2008.

28. The applicant and G.J. lodged a court complaint seeking to oblige the investigating authority to cancel the decision of 13 August 2008, to institute criminal proceedings in relation to their alleged ill-treatment and to be recognised as victims.

29. On 21 October 2008 the Kentron and Nork-Marash District Court of Yerevan dismissed the complaint. The applicant and G.J. lodged an appeal.

30. On 3 December 2008 the Criminal Court of Appeal dismissed the appeal as unsubstantiated and left the decision of the District Court in force. Besides referring to the findings as contained in the investigator's decision

of 13 August 2008, the Court of Appeal also indicated that on 27 February 2008, on the same day as G.J. declared before the court that he had been ill-treated in the Police Department, a record was drawn up, according to which no bodily injuries were discovered on him during his physical examination. The record was signed both by the officers of the Vardashen remand centre and G.J., who also indicated that he agreed with the results of the examination. The applicant's allegation that the conclusion of the forensic medical examination of 29 February 2008 was indicative of his beatings by police officers upon bringing him to the Police Department was unsubstantiated. In particular, as it appeared from the materials of the case, during the police operation at the Argavand intersection, when disarming the applicant, a fight between him and the police officers had taken place. During the fight shots were fired from the service gun of a police officer as a result of which several persons, including the applicant, were injured. On 13 August 2008 criminal proceedings were instituted on account of exceeding duties by police officers for unlawfully keeping L.P. and K.H. in police custody following the police operation of 23 February 2008. Since it was still necessary to continue the investigation into the shooting incident, it had been decided to conduct it together with the above-mentioned instituted criminal case.

31. On 27 December 2008 the applicant and G.J. lodged an appeal on points of law against the decision of the Court of Appeal.

32. On 22 January 2009 the Court of Cassation decided to declare the appeal inadmissible for lack of merit. In the decision, it was, *inter alia*, stated that the applicant, during his arrest, had disobeyed the lawful orders of the representatives of authority and used violence, dangerous for life and limb, against them.

(d) Bringing a charge against the applicant and his detention on remand

33. On 25 February 2008 the applicant was charged with using violence, dangerous for life or limb, against police officers, an offence envisaged by Article 316 § 2 of the Criminal Code. In the decision to bring the charge it was stated that during the police operation at the Argavand intersection on 23 February 2008 the applicant disobeyed the lawful orders of the police officers to stop the car by driving into the police van. Thereafter, he threatened the police officers with violence, attempted to take a pistol out of his pocket, put up resistance and used violence, dangerous for life and limb, against the police officers by punching police officer R.M. in the face, inflicting a bodily injury on the latter.

34. On the same day investigator M. decided to lodge a motion with the Kentron and Nork-Marash District Court of Yerevan seeking to detain the applicant on remand on the ground that the applicant had committed an offence punishable by more than one year's imprisonment and that the applicant, if he remained at large, could abscond, evade criminal liability,

obstruct justice or commit another offence. The decision also contained a description of the circumstances of the case similar to those laid out in the decision to bring a charge against the applicant, and also referred to witness statements of police officers R.M. and A.A. and police reports by the same police officers R.M. and A.A. as well as police officers M.G. and A.M.

35. The applicant made a written note at the end of the motion saying that, due to his poor health, he was unable to attend the court hearing. In any case, he had a defence lawyer who would represent him in court.

36. According to the applicant, nonetheless, on the same day the police officers put on him the damaged, blood-stained medical corset seized from him earlier and, holding him by the arms, took him to the Kentron and Nork-Marash District Court of Yerevan for the court examination of the investigator’s motion.

37. During the examination of the investigator’s motion by the District Court the applicant submitted that the motion was unsubstantiated as there was insufficient evidence to assume that, if remaining at large, he could abscond, evade criminal liability or obstruct justice. Besides, he was suffering from spinal tuberculosis, had three children in his care and was of good character. The applicant also requested to be released on bail, if the District Court decided to detain him.

38. On 25 February 2008, at 10.45 p.m., the Kentron and Nork-Marash District Court of Yerevan decided to grant the investigator’s motion and detained the applicant for two months starting from 24 February 2008. In doing so, the District Court found that the applicant, if he remained at large, might abscond, obstruct the investigation by means of exerting unlawful pressure on the persons participating in the case, commit a new offence or evade criminal liability and punishment. Furthermore, taking into account the nature and gravity of the imputed offence and the particular circumstances of the case, the applicant’s request to be released on bail was rejected.

39. It appears that, upon the conclusion of the court examination, the applicant was taken to Nubarashen remand centre from where, at 1.40 a.m. on 26 February 2008, he was transferred back to the tuberculosis department of the Hospital for Convicts.

40. On 3 March 2008 the applicant lodged an appeal against his detention order claiming, *inter alia*, that he was suffering from spinal tuberculosis which, in accordance with Government Decree No. 825-N of 26 May 2006, was included in the list of grave diseases impeding the serving of punishment.

41. On 7 March 2008 the Criminal Court of Appeal dismissed the applicant’s appeal by upholding the findings of the District Court. As for the applicant’s state of heath and his illness, the Court of Appeal found that a medical examination had to be carried out in order to answer those questions. Furthermore, the application of the measure of restraint was not

related to serving punishment. Therefore, the applicant's argument could not be accepted.

42. On 15 April 2008 the applicant lodged an appeal on points of law against the decision of the Court of Appeal, which was left unexamined by the Court of Cassation on 4 May 2008.

(e) Conditions of the applicant's detention in the Hospital for Convicts

43. According to the applicant, the Hospital for Convicts had no appropriate facilities for detention of persons suffering from spinal tuberculosis. In particular, for most of his detention he was kept in a patient cell which had a squat toilet with a hole in the floor. Because of the nature of his disease, including his inability to squat, having to use that type of toilet subjected him each time to indescribable pain and humiliation. He had to overcome acute pain in order to meet his basic needs of hygiene, such as body care and cleanliness.

(f) The court proceedings

(i) The applicant's detention at the trial stage

44. On 19 April 2008 the investigation of the applicant's case was concluded and on 23 April 2008 the General Prosecutor of Armenia sent the applicant's case to the Yerevan Criminal Court for trial. A copy of the letter was also sent to the Head of the Hospital for Convicts informing the latter that as from 23 August 2008 the applicant's detention term was calculated by Yerevan Criminal Court.

45. On 25 April 2008 Judge M. of the Yerevan Criminal Court admitted the case to his proceedings.

46. On the same day the applicant's defence lawyer lodged a request with the Head of the Hospital for Convicts stating that his detention as ordered by the Kentron and Nork-Marash District Court of Yerevan on 25 February 2008 had expired on 24 April 2008, and seeking to be released.

47. On 28 April 2008 the Head of the Hospital for Convicts informed the applicant's lawyer that starting from 23 April 2008 the applicant's detention term was calculated by Yerevan Criminal Court.

48. On 5 May 2008 the applicant lodged a request, similar to that of 25 April 2008, with the Yerevan Criminal Court.

49. On 8 May 2008 the Yerevan Criminal Court decided to set the applicant's case down for trial assigning 19 March 2008 as the date of the first court hearing of the case. By the same decision it dismissed the applicant's request to be released, finding that the applicant's detention had been ordered by a court decision in due process, while no maximum term for the applicant's detention during trial was prescribed. It also held that the applicant's detention, as a measure of restraint, had been chosen correctly and was not to be modified or cancelled.

50. On 19 May 2008, during the first court hearing of the case, the applicant, who had two defence lawyers, lodged another motion seeking to be released. According to the applicant, the trial court then decided to postpone its examination until the circumstances essential for its determination had been established.

51. According to the applicant, on 3 and 5 June 2008, he again lodged motions seeking to be released and claiming that his continued detention was causing him physical suffering and therefore contained punitive elements which amounted to his torture. In this respect, the applicant referred to the commission forensic medical examination report which indicated that he was in need of long-term in-patient treatment in a specialised clinic under strict bed-rest, and additional care. The trial court decided not to examine the motions.

52. On 13 June 2008 the Head of the Hospital for Convicts, upon an inquiry by the trial court, informed the latter in writing that the applicant had been kept in the tuberculosis department of the institution, diagnosed with relapsed tuberculous spondylitis, where he was receiving appropriate treatment, and that no additional care could be provided to him in the prison institution.

53. At the hearing of 16 June 2008 the trial court promulgated the letter of 13 June 2008 and decided to modify the applicant's measure of restraint from detention to an obligation not to leave. In doing so, the trial court referred to the applicant's serious illness and the need for additional care which could not be ensured in the penitentiary institution.

(ii) The applicant's participation in the court hearings

54. According to the applicant, while in detention, he was transported to the trial court in a prison van which was not adapted to transporting patients. In particular, it had a small area separated with iron rods with a wooden bench inside. Each time he was transferred to a court hearing, a journey of around 10 km., he experienced severe back pain.

55. The applicant further claims that, after being released from detention on 16 June 2008 and up until 9 September 2008, he appeared at all the court hearings even though he was receiving regular treatment in hospital and at home and despite the fact that doctors advised him to stay in bed. In order to attend the court hearings he had to walk with crutches.

56. It appears that starting from 9 September 2008 the applicant's health deteriorated and he was hospitalised.

57. On 22 September 2008 the Yerevan Criminal Court decided, upon a corresponding motion lodged by the applicant's defence lawyers, to suspend the applicant's trial based on the fact that the applicant had been hospitalised and was in need of long-term treatment. In this respect, the trial court referred to the findings of the commission forensic medical examination of 7 April 2008 as well as a letter from the hospital certifying

that the admission of the applicant who was in need of long-term bed rest treatment under medical supervision, and that he was unable to move actively, including to attend the hearings.

58. On 2 October 2008 the Yerevan Criminal Court decided to resume the trial on the ground that on 1 October 2008 it had received a letter from the hospital informing it that on 30 September 2008 the applicant had been discharged from hospital with some improvement to his health.

59. According to the applicant, thereafter the trial court regularly scheduled court hearings which he could not attend since, if he moved, his condition would get worse. On 9 October 2008 he was forced to attend a court hearing, because in case of his non-appearance, the trial court would have decided to detain him on remand again. However, just as he reached the court house his pain exacerbated and he could be taken home only after an ambulance had been called and he had been given a painkilling injection.

60. It appears that, following his discharge from hospital, the applicant received outpatient medical treatment at one of the polyclinics in Yerevan whose doctors visited him regularly.

61. It further appears that on 20 October 2008 the trial court sent an inquiry to the administration of the above polyclinic seeking to find out the applicant's state of health with a view to his further participation in court hearings. On 28 October 2008 the chief of the polyclinic, in reply to the above inquiry, informed the Yerevan Criminal Court in a letter that the applicant was considered as second degree disabled and was under medical supervision by the polyclinic's doctors. In accordance with a council of physicians held on 27 October 2008, the applicant was found to be suffering from Bekhterev's disease namely ankylosing spondylitis, at a progressive stage accompanied with vertebral nerve-root pain syndrome. In addition, the applicant was suffering from tuberculosis of the 8th and 9th thoracic vertebrae and the lower part of the left lung, accompanied with breathing deficiency and secondary myocardiodystrophy. Bed rest was prescribed and appropriate treatment was assigned. It was also added that the issue of the applicant's further attendance and participation in court hearings fell outside the competence of the polyclinic.

62. According to the applicant, in the period from October until December 2008 his defence lawyers lodged several motions seeking to suspend the trial due to the applicant's state of health, which were dismissed by the trial court.

63. On 1 December 2008 the trial court decided to bring the applicant by force in order to secure his presence at the trial. Starting from that date, before the beginning of each court hearing, the police appeared at the applicant's home in order to take him to the court hearing. However, a nurse from the polyclinic who was taking care of the applicant at his home refused to allow the applicant to be taken to the trial because of his state of health.

64. On 11 February 2009 the applicant's defence lawyers submitted to the Yerevan Criminal Court a letter from a clinic in Germany stating that the Bekhterev's disease and the spinal tuberculosis, with which the applicant was diagnosed, could be treated in that clinic after corresponding medical checks were carried out. Based on that letter, the defence lawyers requested the court to cancel the applicant's measure of restraint, namely the obligation not to leave, and to permit him to travel to Germany in order to visit the clinic for the health checks to be carried out.

65. According to the applicant, the trial court refused to examine the request on the ground that it could not examine it in the applicant's absence. On 27 February 2009, before a court hearing assigned on that day, the police officers visited the applicant's home and took him to the trial court. Because the police officers had not ensured his transfer in a special vehicle designed for patients, he was transferred in an armchair provided by his relatives. However, the court hearing did not take place on that date as the prosecutor did not appear.

66. On 1 March 2009 the applicant's case, following amendments to the Code of Criminal Procedure, was sent to the Kentron and Nork-Marash District Court of Yerevan, which took over examination of the case.

67. According to the applicant, on 17 March 2009, at the beginning of the court hearing of his case, his defence lawyers lodged a motion with the trial court seeking to lift the applicant's measure of restraint, namely. the obligation not to leave, so that he could receive treatment abroad. In substantiation of the motion the lawyers claimed that the applicant's health was deteriorating, and that no effective treatment could be provided in Armenia. In case the trial court insisted on examining such motion in the applicant's presence, the defence lawyers requested adjournment of the hearing, claiming that the applicant was ready to endure severe pain and to appear before the court so that the question of his treatment could be finally solved. The trial court, without examining the first two motions, adjourned the hearing until the applicant was transferred to the court. On the same day his relatives took him with much difficulty to the court. However, as the trial started, the court refused to examine the motion and proceeded to hear the prosecutor's final pleadings. The defence lawyers then lodged a motion seeking the trial court to authorise the applicant's departure abroad, without cancelling his measure of restraint, for the purpose of his undergoing medical examinations there. However, the trial court refused to examine that motion too. On 27 March 2003 his defence lawyers, because of his serious health problems and spinal pain, were forced to make the final pleadings. Moreover, in order to reduce the time, the defence lawyers decided not to make the final pleadings orally but to submit them in writing. Together with the pleadings, his defence lawyers requested cancellation of his measure of restraint so that he could go abroad for treatment. Because of the pains in

his back he refused to make the final speech before the conclusion of the trial.

68. On 31 March 2009 the Kentron and Nork-Marash District Court of Yerevan, together with the delivery of its verdict in respect of the applicant, ordered the applicant's measure of restraint, namely his obligation not to leave, to remain unchanged until the verdict became final.

69. On 29 April 2009, the applicant, together with his appeal against the verdict lodged with the Criminal Court of Appeal, requested the latter to cancel his measure of restraint so that he could go abroad for treatment.

70. On 11 May 2009 the Criminal Court of Appeal decided to admit the applicant's appeal to its proceedings and to set the case down for court examination. By the same decision, the Court of Appeal ordered the cancellation of the applicant's measure of restraint since it prevented him from receiving medical treatment. In doing so, the Court of Appeal referred to the conclusions of the applicant's commission forensic medical examination and the letter of the clinic in Germany proposing treatment. The applicant alleges that the decision to cancel his measure of restraint was prompted by the fact that he, at the time of lodging the first of his two present applications, requested the European Court of Human Rights to apply an interim measure in his respect obliging the Armenian authorities to secure his immediate in-patient treatment at the hospital of his own choice. He further claims that following the lifting of the obligation not to leave, he left for Germany where he visited the clinic and underwent treatment.

(iii) The applicant's trial

71. On 19 March 2008 the applicant's trial started. According to the applicant, at the first hearing which took place on that date, he lodged a motion for Judge M. to withdraw from the examination of the case for lack of impartiality. In particular, Judge M. had not released him from detention following the transfer of the case to the Yerevan Criminal Court for trial and had indicated that the investigation had been conducted without substantial violation of the procedural law. The motion was dismissed as unsubstantiated. Besides, in the late stage of the trial, he had lodged a motion seeking to resume the examination of evidence on the ground that, over several months after the conclusion of the stage of the examination of evidence in his case, various pieces of evidence, important for the determination of his case, had been acquired. The trial court decided to dismiss that motion as well.

72. During the trial, the Yerevan Criminal Court summoned and questioned as witnesses a number of police officers who had participated in the police operation at Argavand intersection on 23 February 2008.

73. Police officer R.M. testified that during the police operation the applicant had disobeyed his order to get out of the car and remained in the driver's seat. After being taken by force from the car, the applicant had hit

him in the face with his hand, pulled and torn the pocket of his uniform jacket which he wore over his black clothes. During the fight he noticed that the applicant had moved his right arm under his jacket, towards an object resembling a pistol handle. Taking that movement for the applicant's attempt to take out his pistol he, together with police officers A.A. and T.K., forced the applicant to the ground and twisted his arms backwards. Almost at the same time, he accidentally fired two shots from his service gun, injuring the applicant as well as police officers T.K. and G.M. Having neutralised the applicant, he found a pistol on him, which he then handed to his colleague, and took the applicant to the Police Department.

74. Police officers A.A., T.K., A.M., M.Gh., A.Suk., G.V., K.Kh., G.G., M.A., V.B., R.K. and G.M. also appeared before the trial court and gave testimony similar to that of police officer R.M.

75. K.H., L.P., A.S. and S.H., who were in the second car accompanying the applicant and G.J. when the police operation was conducted, were also summoned and testified before the trial court. None of them testified that they had seen the applicant hitting a police officer. A.S. stated that he had witnessed a police officer hitting the applicant on the head with a gun butt, pulling him out of the car and throwing him to the ground. The others stated that they saw the applicant either being forced to, or already lying on, the ground. It appears that, upon the applicant's motion, G.J. was also summoned to the court and questioned.

76. It further appears that the trial court also examined R.M.'s forensic medical examination certifying his bodily injuries, namely a bruise and scratches on his face as well as a forensic examination of R.M.'s uniform jacket certifying damage to the pocket caused by pulling the fabric.

77. On 31 March 2009 the Kentron and Nork-Marash District Court of Yerevan delivered its verdict finding the applicant guilty under Article 316 § 1 of the CC for using violence, not dangerous for life and limb, against police officer R.M. and sentencing him to a suspended term of three years' imprisonment. In doing so, the trial court found it established that on 23 February 2008 the Police Department received operative information that persons travelling in two cars, of BMW and VAZ makes, from the town of Ejmiatsin to Yerevan were armed. On the same day, at 11.00 p.m. an operative action was carried out by special task police officers of the Police Department. During the operation, a police van blocked the leading BMW car as a result of which the two cars collided. Police officer R.M. jumped out of the police van and shouted "Police. Don't move!" Three other police officers also jumped out of the police car. The police officers were in black uniform. Police officer R.M. also wore a police jacket over his black uniform. The police officers immediately started to carry out actions aimed at disarming and neutralising the persons. The applicant, although he realised that the persons addressing him were police officers, disobeyed their lawful orders to get out of the car and to hand over his gun,

hit police officer R.M. once with his hand, pulled the latter's jacket and tore it. By applying physical force, police officer R.M. and police officers A.A. and T.K. managed to neutralise the applicant, who was found to have an IZH-75-type pistol under his jacket, and took him by force to the Police Department. During a fight that took place when neutralising the applicant, two shots were fired from a gun belonging to police officer R.M. inflicting injuries to the applicant and police officers T.K. and G.M.

78. On 29 April 2009 the applicant lodged an appeal against his verdict arguing, *inter alia*, that the District Court had failed to assess properly the evidence, ignored his submissions, dismissed his motions and based its findings solely on the testimony of police officers.

79. On 15 July 2009 the Court of Appeal decided to uphold the verdict of the District Court and dismissed the applicant's appeal finding that the arguments contained therein were unsubstantiated.

80. On 14 August 2009 the applicant lodged an appeal on points of law.

81. On 14 July 2009 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

82. According to the applicant, following the cancellation of the measure of restraint, he left for Germany, was admitted to the above-mentioned clinic and was successfully treated.

3. The court verdict in respect of G.J.

83. On 23 March 2009 the Kentron and Nork-Marash District Court of Yerevan delivered its verdict in respect of G.J. finding him guilty for using violence against police officers of the Police Department following his arrest. In the judgment, in the part concerning the facts as established by the court, it was stated that during the police operation the applicant had used violence, dangerous for life and limb, against the police officers who took part in the police operation.

4. Alleged prosecution of the applicant's relatives

84. The applicant further alleges that, for the purpose of punishing G.J. and forcing him to retreat from his views, the authorities started to persecute their relatives. In particular, his sister's son, who worked as Erebuni District Prosecutor of Yerevan, was unlawfully removed from his work and prosecuted for evading military service. In addition, a criminal case was instituted for tax evasion by two commercial enterprises founded by G.J.'s son, Vr.J.

B. Relevant domestic law

For relevant domestic provisions, international and domestic documents see the Statement of Facts in the case of Saghatelyan v. Armenia, no. 23086/08, communicated on 30 November 2010.

COMPLAINTS

A. Complaints lodged in application no. 44765/08

85. The applicant complains under Article 3 of the Convention that during the police operation the law enforcement authorities used unnecessary force against him and G.J.; he was beaten by the police officers upon being brought to the Police Department; neglecting his injuries the police officers did not ensure timely and proper medical assistance upon his arrest and throughout the arrest period; he suffered mental anguish on witnessing G.J.'s ill-treatment during the police operation and upon his being brought to the Police Department, and also because of the unlawful prosecution of his relatives; his detention was incompatible with his state of health since no appropriate treatment or care was provided to him in the Hospital for Convicts, and because for most of his detention he was kept in a cell that lacked adequate conditions for detention of persons suffering from spinal tuberculosis; his forced participation in the trial both before and after his release from pre-trial detention caused him severe pain, suffering and humiliation; and the domestic authorities failed to conduct an effective investigation into his and his brother's allegation of ill-treatment.

86. The applicant complains under Article 5 § 1 of the Convention that his deprivation of liberty was unlawful since there was no legal basis in the domestic law for bringing him to the Police Department; during the arrest the police officers, in violation of the prescribed regulations, were not wearing uniforms but were in black clothes; his detention from 24 April 2008 until 16 June 2008 was unlawful as it was not based on a court decision; and there was no reasonable suspicion for his arrest and detention.

87. The applicant complains under Article 5 § 3 of the Convention that the decisions of the competent bodies to apply and keep him in detention were unreasoned and unjustified. Moreover, the competent authorities did not display due diligence in conducting the proceedings.

88. The applicant complains under Article 5 § 4 of the Convention that the Criminal Court of Appeal failed to conduct a proper examination of his appeal against his court detention order; the trial court did not discontinue

the case upon its admission to its proceedings and therefore pre-judged his guilt; and the two-month detention period ordered in his respect cannot be considered as a reasonable interval for the review of lawfulness of his detention within the meaning of this paragraph.

89. The applicant complains under Article 13 of the Convention about the refusal of the authorities to recognise him as a victim and to institute criminal proceedings on account of his alleged ill-treatment.

90. The applicant complains under Article 14 of the Convention that his and G.J.'s criminal prosecution and ill-treatment as well as the persecution of their relatives were due to G.J.'s views, and, in particular, the speech he made at the opposition rally on 22 February 2008.

91. The applicant complains under Article 18 of the Convention that he was deprived of liberty for a purpose other than that indicated in Article 5 § 1 (c), namely because the authorities wanted to exert pressure on G.J.

B. Complaints lodged in application no. 10607/10

92. The applicant complains under Article 6 § 1 of the Convention that:

(a) his right to an impartial tribunal was violated since the same judge examined his motions seeking the judge's withdrawal from the case for lack of impartiality; the courts by authorising his pre-trial detention and not terminating the case against him in essence pre-judged his guilt; and because the trial court was not impartial as both the Court of Cassation, in its decision of 22 January 2009 and the Kentron and Nork-Marash District Court of Yerevan, in its judgment of 23 March 2009 delivered in G.J.'s case, indicated that he had used violence against police officers on 23 February 2008;

(b) the domestic courts were not independent as they acted under pressure from the executive authorities; and

(c) his trial was unfair since his conviction was based solely on the testimony of police officers; he was unable to challenge effectively the unlawful actions of the police officers; the evidence underlying his conviction was unreliable and contradictory; and the domestic courts failed to indicate proper reasons or address his arguments properly and reached arbitrary conclusions when finding him guilty.

93. The applicant complains under Article 6 § 3 (b) of the Convention that he did not have adequate facilities for the preparation of his defence since throughout the trial proceedings his defence lawyers were restrained by his serious health problems; the criminal proceedings against him and G.J. were disjoined and examined in different court proceedings; and because the trial court refused to grant his request seeking to re-open the court examination stage and to admit as evidence the circumstances already established in the concurrent trial of G.J.

94. The applicant complains under Article 6 § 2 of the Convention that the principle of the presumption of innocence was violated since both the Court of Cassation in its decision of 22 January 2009 and the Kentron and Nork-Marash District Court of Yerevan in its judgment of 23 March 2009 delivered in G.J.'s case indicated that the applicant had used violence against police officers on 23 February 2008.

95. The applicant complains under Article 2 of Protocol No. 4 that the obligation not to leave, imposed on him from 16 June 2008 until 11 May 2009, violated his right to freedom of movement.

96. The applicant complains under Article 13 of the Convention that he had no effective domestic remedy against the arbitrariness of the domestic courts' conclusions on his guilt, wrongful and corrupt assessment of evidence, lack of adversarial proceedings, use of inadmissible evidence and partiality of the domestic courts.

THE LAW

A. Alleged use of unnecessary force against the applicant during the police operation and alleged failure to conduct an effective investigation therein

97. The applicant complains that the police officers used unnecessary force against him during the police operation at the Argavand intersection and that the domestic authorities failed to conduct an effective investigation into the use of such force. He invokes Article 3 of the Convention which provides:

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

98. 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 Court, to give notice of these complaints to the respondent Government.

B. Alleged failure to ensure timely and proper medical assistance to the applicant when under arrest; alleged lack of adequate treatment and care for the applicant while in detention and alleged lack of adequate conditions for his detention; and the applicant's participation in the trial despite his poor health and the alleged lack of proper conditions for his transportation

99. The applicant further complains under Article 3 of the Convention that no timely and proper medical assistance was provided to him when under arrest; that no adequate treatment and care was provided to him while in detention and that the conditions for his detention were inadequate; that he was forced to participate in the trial despite his poor health and that, while in detention, he was transported to the court in a prison van not adapted for carrying detainees with health problems.

100. 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 Court, to give notice of these complaints to the respondent Government.

C. Alleged unlawfulness of the applicant's detention

101. The applicant complains that there was no court decision authorising his detention from 24 April until 16 June 2008. He invokes Article 5 § 1 of the Convention, which, in so far as relevant, 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:
>
> ...
>
> (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".

102. 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 Court, to give notice of this complaint to the respondent Government.

D. Alleged lack of effective domestic remedies

103. The applicant complains that there were no effective domestic remedies against the alleged use of unnecessary force against him during the police operation. He invokes Article 13 of the Convention which provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

104. 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 Court, to give notice of this complaint to the respondent Government.

E. Other complaints

105. The applicant also raised a number of other complaints under Articles 3, 5 §§ 1, 3 and 4, 6 §§ 1, 2 and 3 (b), 13, 14 and 18 of the Convention as well as Article 2 of Protocol No. 4 (see paragraphs 85-96 above).

106. 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 applications 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 complaints concerning the alleged use of unnecessary force against the applicant during the police operation and the alleged failure of the authorities to conduct an effective investigation therein; the alleged failure to ensure timely and proper medical assistance to the applicant when under arrest; the alleged lack of adequate treatment and care for the applicant while in detention as well as the alleged lack of adequate conditions for detention; the applicant's forced participation in the trial despite his poor health and the alleged lack of proper conditions for his transportation; the alleged unlawfulness of the applicant's detention from 24 April until 16 June 2008; and the alleged lack of effective domestic remedies against the alleged use of unnecessary force;

Declares the remainder of the applications inadmissible.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President