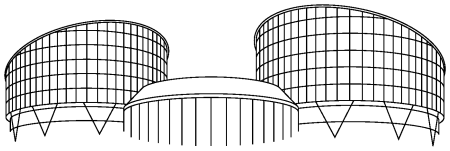

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TEYMURAZYAN v. ARMENIA

(Application no. 17521/09)

JUDGMENT

STRASBOURG

15 March 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Teymurazyan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Aleš Pejchal,
Ksenija Turković,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 20 February 2018,

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

PROCEDURE

1. The case originated in an application (no. 17521/09) 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 Vardan Teymurazyan ("the applicant"), on 23 March 2009.

2. The applicant was represented by Ms A. Melkonyan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicant alleged, in particular, that no compensation for non-pecuniary damage was available to him under Armenian law in respect of his ill-treatment and unlawful deprivation of liberty.

4. On 17 November 2011 the application was communicated to the Government. On 15 March 2016, the Chamber to which the case had been allocated decided to request further information from the parties concerning the admissibility and merits of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Yerevan.

A. The applicant's two criminal convictions and their subsequent reopening

6. In 1983 and 1988 the applicant was found guilty of indecent acts with minors and sentenced to prison sentences.

7. On 25 January 2001 the Court of Cassation decided to allow an extraordinary appeal lodged by the Deputy Prosecutor General of Armenia, quashed the two judgments and terminated both sets of criminal proceedings against the applicant on the grounds of absence of *corpus delicti*. In particular, the Court of Cassation found that there was no evidence to suggest that the applicant had committed the imputed offences, and that the court judgments had been based on assumptions and erroneous interpretation of the law.

8. From 2001 the applicant lodged two civil claims against the State, seeking compensation for pecuniary damage sustained as a result of his two convictions. These claims were allowed on 10 September 2001 and 26 August 2005 by the Kentron and Nork-Marash District Court of Yerevan, which decided to award the applicant – as an acquitted person – sums of money in compensation for lost income, medical costs incurred to restore his damaged health, his future treatment abroad and travel costs to be incurred in that connection.

B. New charges against the applicant and his acquittal

9. On 13 April 2005 Investigator N. of the Kentron and Nork-Marash District Prosecutor's Office instituted a criminal case under Article 316 § 1 of the Criminal Code ("the CC") in respect of the applicant who was suspected of having assaulted two traffic-police officers, V.S. and G.G., who had stopped the applicant's car for a violation of traffic laws.

10. On the same date, the applicant was arrested and two days later charged, under the same Article, with assaulting the two traffic-police officers.

11. On 16 April 2005 it was decided not to detain the applicant and to release him on a written undertaking not to leave his place of residence, on the grounds that he was a disabled person suffering from a number of diseases, had no previous convictions, had two children who were minors, as well as his wife and mother as dependants, and had a permanent place of residence.

12. On an unspecified date the two police officers were recognised as victims for the purposes of the criminal case.

13. On 5 May 2005 the Kentron and Nork-Marash District Court of Yerevan, on the basis of an application by the investigator, changed the preventive measure in respect of the applicant from a written undertaking not to leave his place of residence to detention on remand for a period of

two months. The applicant lodged an appeal against that decision, which was dismissed by the Criminal Court of Appeal on 2 June 2005.

14. In the course of the investigation the applicant testified that V.S. and G.G. had demanded a bribe from him in order not to record a violation of the traffic laws and then subjected him to beatings when he refused. A forensic medical examination of the applicant was carried out, which found that he had suffered injuries, including concussion and a fractured cheek bone.

15. On 10 June 2005 the applicant's lawyer addressed a letter to the investigator, alleging that it had been the applicant who had been assaulted by V.S. and G.G rather than the other way around. Thus, the applicant's actions had been wrongly assessed as falling within the scope of Article 316 § 1 of the CC, while no charges had been brought against the police officers. The lawyer requested the investigator that such charges be brought.

16. On 20 June 2005 the District Prosecutor decided to replace the applicant's detention on remand with a written undertaking not to leave his place of residence, on the same grounds as previously (see paragraph 11 above).

17. On 21 June 2005 Investigator N., having reviewed the materials of the criminal case against the applicant, took a decision to discontinue a part of that case and not to carry out criminal prosecution (*Որոշում քրեական գործի մասը կարճելու և քրեական հետապնդում չիրականացնելու*) with regard to the infliction of injuries on the applicant by V.S. and G.G.. The investigator found that the traffic-police officers had inflicted injuries on the applicant as they had tried to overcome his resistance at the time of arrest, and therefore their actions had amounted to a legitimate use of force.

18. On 16 February 2006 the Kentron and Nork-Marash District Court of Yerevan acquitted the applicant, finding that he was not guilty of the imputed offence. The District Court also held that the police officers V.S. and G.G. had exceeded their authority by acting violently against the applicant, which had caused serious damage and grave consequences to the applicant and his family. In particular, the applicant had been taken to the police station unlawfully and had been arrested on the basis of false information provided by traffic-police officers V.S. and G.G. The police officers had subjected the applicant to beatings, as a result of which the latter had sustained injuries, including a concussion and a fractured cheek bone. Furthermore, they had forced the applicant into the police car and driven him to the police station leaving the applicant's car, with his eight-year-old son inside, in the outside lane of the road. As a result, the applicant's son had suffered psychological trauma and damage to his health. In spite of the fact that the applicant had not violated the conditions of his written undertaking not to leave his place of residence and that he had been a disabled person and had had two minors as dependants, the investigator had applied to a court with an unfounded application seeking to have him

detained. As a result, the applicant had been detained from 5 May to 20 June 2005. Moreover, the grounds for his release on 20 June 2005 under a written undertaking were the same as those which had already been used on 16 April 2005 to justify his release under a written undertaking as opposed to placing him in pre-trial detention. The District Court lastly found that the investigator had taken an unfounded decision not to prosecute the police officers by assessing their actions as lawful and asked the Prosecutor General, with reference to Article 184 of the Code of Criminal Procedure ("the CCP"), to institute criminal proceedings against them under Article 309 § 3 of the CC for exceeding their authority, resulting in grave consequences.

19. On unspecified dates the prosecutor's office and Officers V.S. and G.G. lodged appeals against that judgment.

20. On 14 November 2006 the Criminal Court of Appeal dismissed the appeals and upheld the judgment of the District Court, finding that the applicant had acted in necessary self-defence. However, it decided to annul the request made to the Prosecutor General on the grounds that Article 21 of the CCP prohibited the reopening of proceedings if there had been a decision of the prosecuting authority to discontinue the proceedings or not to carry out prosecution. On 21 June 2005 the investigator had taken such a decision in respect of V.S. and G.G., which had never been annulled, hence Article 21 excluded the possibility of prosecuting them.

21. On 15 May 2007 the Court of Cassation declared inadmissible for lack of merit an appeal lodged by police officers V.S. and G.G. against that judgment.

C. The applicant's complaint against the investigator's decision of 21 June 2005

22. On 27 November 2007 the applicant lodged a complaint with the courts, seeking to annul the investigator's decision of 21 June 2005 as it contradicted the findings reached by the courts in his trial when assessing the actions of the police officers.

23. The district prosecutor argued that the applicant's complaint must be dismissed, since he had missed the six months' time-limit prescribed by Article 21 § 4 of the CCP. The applicant argued in reply that, pursuant to Article 21 § 5 of the CCP, the time-limits prescribed by that Article did not apply in the event of newly emerged circumstances, which in his case were the judgments adopted in his criminal case. Furthermore, the prosecuting authority was obliged by law to take measures to restore his rights of its own motion.

24. On 25 March 2008 the Kentron and Nork-Marash District Court of Yerevan decided to dismiss the complaint, finding the district prosecutor's arguments under Article 21 of the CCP to be valid. It further stated that the

district prosecutor's office could not bear responsibility for the applicant's failure to contest the investigator's decision in due time.

25. The applicant lodged an appeal against that decision.

26. On 19 May 2008 the Criminal Court of Appeal dismissed the applicant's appeal, finding that Article 21 § 5 of the CCP was not applicable to his case and holding that the applicant had failed to contest the investigator's decision of 21 June 2005 within the time-limits prescribed by Articles 21 and 290 of the CCP, as well as the time-limit for requesting a reopening of a case prescribed by Article 426.3 of the CCP. The Court of Appeal's decision was subject to appeal within one month of the date of its delivery.

27. On 16 March 2009 the applicant lodged an appeal on points of law against the Court of Appeal's decision, together with a request that the missed one-month time-limit for appeal be renewed.

28. On 8 April 2009 the Court of Cassation found that the applicant had failed to show that he had valid reasons for missing the prescribed one-month time-limit and decided to refuse the examination of the applicant's appeal on points of law.

D. The applicant's civil claims for pecuniary damages and compensation in respect of non-pecuniary damage

1. First civil claim

29. On 11 September 2007 the applicant lodged a civil claim against the State, seeking further compensation for pecuniary damage, specifically for loss of income, and compensation for non-pecuniary damage in relation to his two unfair convictions, in the amount of 15,078,664 United States dollars, and in relation to his unlawful arrest and detention and infliction of bodily harm, in the amount of 1,000,000 euros (EUR).

30. On 26 November 2007 the Kentron and Nork-Marash District Court decided to dismiss his claims. It stated at the outset that the applicant was an "acquitted person" within the meaning of Article 66 of the CCP and was entitled under the same Article to claim pecuniary damage suffered as a result of his unlawful arrest, detention, indictment and conviction. However, the types of compensation that the applicant sought were not envisaged by Article 66 § 4 of the CCP, apart from that sought for loss of income, which the applicant had failed to substantiate.

31. On 28 November 2007 the applicant lodged an appeal.

32. On 7 March 2008 the Civil Court of Appeal dismissed the applicant's appeal and upheld the judgment of the District Court, finding that the applicant had already been compensated for pecuniary damage in relation to his convictions, while his new claims for pecuniary damages were unsubstantiated. As regards the claim for non-pecuniary damage, this

had to be rejected on the grounds that Armenian law did not provide for compensation for non-pecuniary damage.

33. On 29 July 2008 the applicant lodged an appeal on points of law, which was declared inadmissible for lack of merit by the Court of Cassation on 28 October 2008.

2. Second civil claim

34. On 26 February 2009 the applicant lodged another civil claim against the State, seeking compensation for pecuniary damage suffered as a result of his ill-treatment, such as various medical costs.

35. On 26 December 2011 the Kentron and Nork-Marash District Court of Yerevan examined the applicant's claim. It held at the outset, with reference to the judgments adopted in the applicant's criminal case and Article 52 of the Code of Civil Procedure, that the applicant had a case for damages under Article 1063 of the Civil Code, taking into account the fact that the police officers' actions had been unlawful within the meaning of that Article. The District Court went on to conclude, however, that there was no causal link between the police officers' unlawful actions and the specific medical costs claimed by the applicant, and decided to dismiss the claim.

36. On 25 January 2012 the applicant lodged an appeal.

37. On 4 October 2012 the Civil Court of Appeal dismissed the applicant's appeal and upheld the judgment of the District Court.

38. On 2 November 2012 the applicant lodged an appeal on points of law, which was declared inadmissible for lack of merit by the Court of Cassation on 28 November 2012.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure

39. Article 21, entitled "Prohibition of double jeopardy", proscribed, as of 21 June 2005, punishment on an individual twice for the same act. Article 21 § 4 provided that a decision of the prosecuting authority to discontinue criminal proceedings or to terminate a criminal prosecution might be annulled only by the Prosecutor General within six months of the date of such a decision.

40. Article 21 § 3, as in force in 2008, provided that a criminal case may not be reopened if there is a decision of the prosecuting authority to discontinue proceedings, to terminate a criminal prosecution or not to carry out a criminal prosecution and it may lead to a worsening of a person's situation, with the exception of cases set out in Article 21 § 4. Article 21 § 5

provided that this rule did not apply in the event of newly emerged circumstances.

41. Article 32 prescribes that proceedings in a criminal case are completed by a decision to discontinue the proceedings or by a final judgment.

42. Article 33 § 4 prescribes that criminal prosecution may be carried out only within the scope of an instituted criminal case.

43. Article 66 § 3 provided at the material time that an acquitted person was entitled to claim full compensation for pecuniary damage caused as a result of his unlawful arrest, detention, indictment and conviction, taking into account possible loss of income. Article 66 § 4 provided that an acquitted person was entitled to receive as compensation the following: (a) salary, pension, allowances and other types of income; (b) damages incurred as a result of confiscation, seizure or freezing of property; (c) court fees; (d) legal fees; and (e) penalties paid as a result of criminal conviction.

44. Article 175 provides that a prosecutor, an investigator or a body of preliminary inquiry are obliged, within the scope of their jurisdiction, to institute criminal proceedings if there are reasons and grounds provided by the Code. Article 176 provides that reasons for instituting criminal proceedings include, *inter alia*, discovery of information regarding a crime or physical evidence and consequences of a crime by a body of preliminary inquiry, an investigator, a prosecutor, a court or a judge while performing their functions.

45. Article 184 § 1 provides that the body of preliminary inquiry, the investigator or the prosecutor, based on the evidence in a criminal case dealt with by them, must adopt a decision to institute a new criminal case and to sever it into a separate set of criminal proceedings, while the court must apply to the prosecutor with a request to adopt such a decision, if a crime unrelated to the crimes imputed to the accused is disclosed, which has been committed by a third person without the involvement of the accused.

46. Article 263 provided, as of 21 June 2005, that a decision to discontinue criminal proceedings or to terminate a criminal prosecution may be contested before a supervising prosecutor within seven days of the receipt of a copy of that decision by a suspect, an accused, a defendant, his or her defence lawyers, a victim, his or her representative, a civil plaintiff, a civil respondent, his or her representatives, or by the physical person or the legal entity on the basis of whose allegations the criminal case was instituted. A refusal of the prosecutor to grant the appeal may be contested before the courts.

47. Article 290 § 1 provides that a suspect, an accused, the defence lawyer, a victim, participants in the proceedings and other persons whose rights and lawful interests have been violated are entitled to lodge complaints with a court against the unlawfulness and unfoundedness of the decisions and actions prescribed by the Code taken by a body of preliminary

inquiry, an investigator, a prosecutor or bodies carrying out operative and intelligence measures, if such complaints have not been allowed by a prosecutor. Article 290 § 2 provides that the same persons are entitled to contest before a court the refusal of a body of preliminary inquiry, an investigator or a prosecutor to receive information about a crime or to institute criminal proceedings, as well as their decisions to suspend or discontinue the proceedings or to terminate the criminal prosecution, in cases prescribed by the Code. Article 290 § 3 provides that a complaint may be lodged with a court within one month of the date of being informed of the refusal or, if no reply is received, one month after the expiry of the one-month period following the lodging of the complaint.

B. Code of Civil Procedure

48. Article 52 § 3 provides that a final judgment adopted in a criminal case is binding on a court in a civil case only to the extent of circumstances establishing actions and the identities of persons who have performed them.

C. Criminal Code

49. Article 309 § 3 provides that deliberate actions committed by an official, which obviously fall outside the scope of his authority and cause considerable damage to the rights and lawful interests of individuals or organisations, or the lawful interests of society or the State, if they accidentally leading to grave consequences, is punishable by imprisonment for a period of between six and ten years and a forfeiture of the right to hold certain posts or to carry out certain activities for a period not exceeding three years.

50. Article 316 § 1 provides that non-life-threatening or non-health-threatening assault or threat of such assault on a public official or his or her next-of-kin, connected with the performance of his or her official duties, is punishable by a fine of between 300 and 500 times the minimum wage or detention of up to one month or imprisonment for a period not exceeding five years.

D. Civil Code

51. Article 17 provides that anyone whose rights have been violated may claim compensation for the damage. Damage is the expenses borne or to be borne by the person, whose rights have been violated, in connection with restoring the violated rights, loss of property or damage thereto (material damage), including loss of earnings which the person would have gained in normal conditions of civil life, had his rights not been violated (loss of income).

52. Article 1063 provides that damage caused to a physical or legal person by unlawful actions (inaction) of a public or local authority or its officials must be compensated by the State or the relevant local authority.

53. Article 1064 provides that damage caused as a result of an unlawful conviction, an unlawful criminal prosecution, an unlawful imposition of a preventive measure in the form of detention or a written undertaking not to leave an individual's place of residence, or an unlawful imposition of an administrative penalty must be compensated in full, in a procedure prescribed by law, by the State, regardless of whether the officials of the body of inquiry, the investigating authority, the prosecutor's office or the courts were at fault.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicant complained that he had been subjected to ill-treatment and that the authorities had failed to carry out an effective investigation into this fact. He relied on Article 3 of the Convention, which reads as follows:

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

55. The Government claimed that the applicant had failed to exhaust domestic remedies and to apply to the Court within six months of the date of the final decision. In particular, the applicant had failed to lodge an appeal against the investigator's decision of 21 June 2005, whereas such a possibility was prescribed by Articles 263 and 290 of the CCP and was capable of providing redress in respect of his complaint under Article 3. However, even assuming that these appeal procedures were not an effective remedy, the applicant should have then applied to the Court within six months of the date of the investigator's decision, which he had failed to do. As regards the civil claims lodged by the applicant on 11 September 2007 and 26 February 2009, taking into account the fact that the applicant had failed to contest the investigator's decision of 21 June 2005, whereby the police officers' actions had been considered to be justified, the fact of the applicant's alleged ill-treatment had never been established. He had not been recognised as a victim and lost the right to compensation under Armenian law. Consequently, the applicant's civil claims had had no prospects of success and had therefore not been an effective remedy.

56. The applicant argued that he had complied with both the exhaustion and the six-month rules. In particular, following the investigator's decision of 21 June 2005 the fact of his ill-treatment had been established by final and binding judgments adopted in his criminal case which in effect had

annulled that decision. In such circumstances, he had not been required to lodge an appeal and the prosecutor had been obliged to institute a criminal case against the police officers pursuant to Articles 175 and 176 of the CCP. Thereafter, because of the inaction of the investigative authorities, he had lodged a complaint with the courts on 27 November 2007, seeking to institute a criminal case on the basis of the final judgments and to bring the perpetrators to justice. The final decision in those proceedings had been taken by the Court of Cassation on 8 April 2009. Thus, he had complied with the requirements of Article 35 § 1 of the Convention. As regards his civil claims, Armenian law at the material time had not envisaged compensation for non-pecuniary damage under any circumstances. It was therefore wrong to link his entitlement to compensation to the fact that no further investigation had been conducted into his allegations of ill-treatment, because he would not have been entitled to such compensation in any event.

57. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 et al., ECHR 2010). The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)). 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 (see *Kennedy v. the United Kingdom*, no. 26839/05, § 109, 18 May 2010). 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 (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V).

58. The Court also reiterates that where it is clear from the outset that no effective remedy is available to the applicant, the six-month period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see, among other authorities, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR 2009). Where an applicant avails himself or herself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate to take the start of the six-month period

from the date when the applicant first became or ought to have become aware of those circumstances (ibid., § 158).

59. In the present case, the applicant alleged in the course of the criminal investigation against him that he had been subjected to ill-treatment by the alleged victims, namely traffic-police officers V.S. and G.G. His allegations were dismissed by the investigator examining his criminal case in a decision adopted on 21 June 2005 and entitled "a decision to discontinue a part of a criminal case and not to carry out criminal prosecution" (see paragraph 17 above). The Government argued that the applicant could have contested the investigator's decision under Articles 263 and 290 of the CCP, which he had failed to do. The domestic courts, in their turn, found that the applicant had missed the deadlines for appeal prescribed by Articles 21 § 4 and 290 of the CCP (see paragraphs 24 and 26 above).

60. The Court notes that it is open to doubt that these remedies were sufficiently certain both in theory and in practice. It underlines that each of the three mentioned Articles prescribed a different time-limit (see paragraphs 39, 46 and 47 above) and, assuming that all three were applicable to the applicant's case, this must have inevitably created confusion as regards the procedural rules to follow. Thus, it cannot be said that the applicant had at his disposal an effective remedy against the investigator's decision of 21 June 2005.

61. The Court nevertheless notes that following the investigator's decision, on 16 February 2006, the trial court examining the applicant's criminal case found the fact of the applicant's ill-treatment to be established and the investigator's decision to be unfounded, requesting that the Prosecutor General initiate a criminal case against the police officers under the relevant provision of the CC (see paragraph 18 above). This could be seen as a first step towards launching a fresh investigation into the applicant's allegations of ill-treatment. The Court notes, however, that that decision was quashed upon appeal by the Criminal Court of Appeal on 12 November 2006, which, while accepting the fact of the applicant's ill-treatment, nevertheless refused to request an investigation into that fact and instead applied the provisions concerning the reopening of a criminal case and found the possibility of reopening to be prohibited under Article 21 of the CCP (see paragraph 20 above). The applicant neither lodged an appeal on points of law against that judgment, nor – assuming that such an appeal was not an effective remedy – applied to the Court within six months from the date of that judgment, and instead tried to raise that issue once again before the courts, using a procedure which had no prospects of success (see paragraphs 22-28 above). However, it ought to have become clear to the applicant at that stage, at the latest as from 12 November 2006, that there would be no further investigation into his allegations of ill-treatment and any new attempts to apply to the courts with the same issue would be futile. The Court is therefore prevented of taking the proceedings

instituted by the applicant on 27 November 2007 into account for the purposes of Article 35 § 1 of the Convention.

62. As regards the two civil claims lodged by the applicant on 11 September 2007 and 26 February 2009, the Court does not consider it necessary to address here the Government's arguments about such claims having no prospects of success for the following reasons. It reiterates that in the area of unlawful use of force by State agents – and not mere fault, omission or negligence – civil or administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, are not considered adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 227, ECHR 2014 (extracts), and *Jørgensen and Others v. Denmark* (dec.), no. 30173/12, 28 June 2016). It follows that the civil claims lodged by the applicant were not effective remedies in respect of his substantive complaint under Article 3 of the Convention in the particular circumstances of the case.

63. In view of the foregoing, the Court concludes that the final domestic decision within the meaning of Article 35 § 1 of the Convention was the decision of the Criminal Court of Appeal of 12 November 2006. Hence, having lodged his application on 23 March 2009, the applicant failed to comply with the six-month time-limit laid down in Article 35 § 1 of the Convention as far as his complaints under the substantive and the procedural aspects of Article 3 are concerned.

64. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

65. The applicant complained that no compensation for non-pecuniary damage sustained as a result of his ill-treatment by the police officers had been available to him under Armenian law. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] 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."

A. Admissibility

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

B. Merits

67. The applicant submitted that Article 13 had been violated in his case since Armenian law had not provided a possibility to seek compensation for any non-pecuniary damage suffered as a result of ill-treatment. He argued that for Article 13 to apply, it was sufficient to have an arguable claim in terms of the Convention. Thus, even if the investigator had decided not to prosecute the police officers by his decision of 21 June 2005, the fact of his ill-treatment and the unlawfulness of the police actions had been unequivocally established by the judgment of the Kentron and Nork-Marash District Court of Yerevan of 16 February 2006 and the higher courts. He therefore had had an arguable claim before the civil courts of having been subjected to treatment prohibited by Article 3 of the Convention. However, his civil claim for compensation in respect of non-pecuniary damage had been dismissed because that type of compensation had not provided for in domestic law.

68. The Government submitted that the applicant had had an effective remedy in respect of his allegations of ill-treatment, as required by Article 13 of the Convention. Domestic law had provided an opportunity, both in theory and in practice, to have the fact of his ill-treatment by the police officers established and, consequently, to seek and obtain redress. The applicant, however, had failed to avail himself of this opportunity by not lodging a timely appeal against the investigator's decision of 21 June 2005. Thus, the final domestic decision concerning the applicant's alleged ill-treatment had been the decision of 21 June 2005, according to which the actions of the police officers had been found to be lawful, and consequently his civil claims had had no prospects of success. Accordingly, in the absence of a finding by a relevant authority of a violation of the applicant's rights guaranteed by Article 3 of the Convention, he had no "arguable claim" under Article 13 in relation to his allegations of ill-treatment.

69. The Court reiterates that the existence of an actual breach of another provision of the Convention is not a prerequisite for the application of Article 13. Article 13 guarantees the availability of a remedy at national level to enforce – and hence to allege non-compliance with – the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Thus, for Article 13 to apply it is sufficient for an individual to have an arguable claim in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131, and *Poghosyan and Baghdasaryan v. Armenia*, no. 22999/06, § 43, ECHR 2012).

70. In the present case, the Government argued that the applicant had been precluded from seeking compensation for damages and had had no arguable claim since the fact of his ill-treatment had not been established by the investigator's decision of 21 June 2005, which was the final decision on

that matter. The Court notes, in this connection, that there is nothing in the domestic law that appears to have automatically deprived the applicant's civil claims of any prospects of success in the absence of a criminal prosecution of the police officers. Moreover, the Government's argument contradicts the circumstances of the case and the findings of the domestic courts. In particular, as already noted above, even if the police officers' actions were never a subject of criminal prosecution and the domestic courts consequently never established the fact of the applicant's ill-treatment in a criminal case against them, the courts in the applicant's trial found it established that the police officers had acted violently against the applicant and had beaten him, causing him serious injuries and damage. The applicant was found to have acted in self-defence and the investigator's decision, characterising the police officers' actions as lawful, was found to have been unfounded (see paragraph 18 above). Pursuant to Article 52 of the Code of Civil Procedures, those findings were binding on the civil courts (see paragraph 48 above), while Article 1063 of the Civil Code provided that the State was liable for any "unlawful actions" of the public authorities and their officials (see paragraph 52 above). It is notable that none of the applicant's civil claims were dismissed by the courts for the reasons specified by the Government. His claim for compensation in respect of non-pecuniary damage was dismissed on the grounds that that type of compensation was not provided for by the domestic law, while his claim for pecuniary damages was dismissed because the courts found no causal link between the ill-treatment and the specific medical costs claimed by the applicant (see paragraphs 30, 32 and 35 above). Moreover, in the latter proceedings the trial court explicitly stated that the applicant had a case for damages under Article 1063 of the Civil Code, taking into account the unlawfulness of the police officers' actions (see paragraph 35 above).

71. In view of the foregoing, the Court concludes that, given the findings reached by the courts in the applicant's trial concerning the actions of the police officers, the applicant had an "arguable claim" under Article 13 of having been subjected to treatment prohibited by Article 3 of the Convention (see, *mutatis mutandis*, *Poghosyan and Baghdasaryan*, cited above, § 44). He should therefore have had an effective remedy before the domestic courts. The applicant's main grievance in this connection is the fact that no compensation for damage of a non-pecuniary nature was available to him at the material time under Armenian law in respect of his allegations of ill-treatment. The Court notes that it has already found, in similar circumstances, the unavailability of compensation for non-pecuniary damage under Armenian law to be in violation of the guarantees of Article 13 of the Convention (ibid., §§ 45-48). There are no reasons to depart from that conclusion in the present case.

72. Accordingly, there has been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

73. The applicant complained that no compensation for non-pecuniary damage in relation to his unlawful arrest and detention had been available to him under Armenian law. He relied on Article 5 § 5 of the Convention, which reads as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

74. The parties did not submit any observations on the complaint raised by the applicant.

A. Admissibility

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

B. Merits

76. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Court (see, among other authorities, *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X). Furthermore, Article 5 § 5 should not be construed as affording a right to compensation of purely pecuniary nature, but should also afford such right for any distress, anxiety and frustration that a person may suffer as a result of a violation of other provisions of Article 5 (see *Khachatryan and Others v. Armenia*, no. 23978/06, § 157, 27 November 2012, and *Sahakyan v. Armenia*, no. 66256/11, § 29, 10 November 2015).

77. Turning to the circumstances of the present case, the Court notes that in acquitting the applicant the trial court found his arrest to have been effected unlawfully and his detention to have been unfounded (see paragraph 18 above). Thus, it can be said that the applicant's deprivation of liberty was in substance found to be in violation of the provisions of Article 5 and therefore Article 5 § 5 is applicable to the applicant's case. His civil claim for non-pecuniary damage, however, was rejected by the domestic courts on the grounds that Armenian law did not envisage

"compensation in respect of non-pecuniary damage" as a type of compensation.

78. The Court has already found the unavailability of compensation for damage of a non-pecuniary nature under Armenian law to be in violation of the guarantees of Article 5 § 5 of the Convention (see *Khachatryan and Others*, cited above, §§ 158-159, and *Sahakyan*, cited above, §§ 30-32). There are no reasons to depart from that conclusion in the present case. It follows that the applicant did not enjoy, in law or in practice, an enforceable right to compensation within the meaning of that Article.

79. There has accordingly been a violation of Article 5 § 5 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 7 TO THE CONVENTION

80. The applicant complained that no compensation for non-pecuniary damage in relation to his two convictions had been available to him under Armenian law. He relied on Article 3 of Protocol No. 7 to the Convention, which reads as follows:

> "When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

81. The Government claimed that Article 3 of Protocol No. 7 was not applicable to the applicant's case because his 1983 and 1988 convictions had not been quashed on the grounds of a "new or newly discovered fact" but through a supervisory review procedure on the grounds of reassessment of the existing evidence.

82. The applicant claimed that he had been convicted by final judgments and had suffered punishment as a result of his convictions. When reversing those judgments, the Court of Cassation had acknowledged a serious failure in the judicial process involving grave prejudice to him as the convicted person.

83. The Court confirms that Article 3 of Protocol No. 7 is applicable to cases where a final conviction has been reversed on the grounds of a new or newly discovered fact showing that there has been a miscarriage of justice, but not where such a conviction has been quashed because of a fresh examination of the evidence in a criminal case (see *Matveyev v. Russia*, no. 26601/02, §§ 40-45, 3 July 2008).

84. In the present case, the applicant's convictions, which had been imposed in 1983 and 1988, were reversed following an extraordinary appeal

by the Deputy Prosecutor General. In doing so, the Court of Cassation found that there was no *corpus delicti* since there was no evidence substantiating the applicant's guilt, while the contested judgments had been based on assumptions and an erroneous interpretation of the law (see paragraph 7 above). Accordingly, the applicant's convictions were not quashed with regard to a "new or newly discovered fact", but due to reassessment by the Court of Cassation of the evidence that had been used in the criminal proceedings against the applicant. The applicant did not argue either that his convictions had been reversed on the grounds of a "new or newly discovered fact". In such circumstances, the Court considers that the conditions of applicability of Article 3 of Protocol No. 7 have not been complied with.

85. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

86. Lastly, the applicant raised a number of other complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

87. 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. 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

89. The applicant claimed a total of EUR 145,881 in respect of pecuniary damage allegedly incurred as a result of his unlawful convictions. He further claimed a total of EUR 481,000 in respect of non-pecuniary damage for his ill-treatment, unlawful deprivation of liberty and unlawful convictions.

90. The Government submitted that there was no causal link between the violations alleged and the pecuniary damages claimed. As regards the claim

for non-pecuniary damage suffered as a result of unlawful convictions, this claim was groundless since Article 3 of Protocol No. 7 was not applicable to the applicant's case. As to the remainder of his claims in respect of non-pecuniary damage, these claims were unreasoned and excessive.

91. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 11,700 in respect of non-pecuniary damage.

B. Costs and expenses

92. The applicant also claimed EUR 6,500 for legal costs of his two consecutive representatives before the Court. He submitted a contract concluded with his first lawyer, obliging him to pay the amount of EUR 3,000 in the event of a successful outcome of the case.

93. The Government objected to this claim. Firstly, most of the applicant's complaints were inadmissible; therefore the amount claimed had to be reduced. Secondly, the applicant had not actually incurred any costs as he had not made any payments to his lawyer. Thirdly, the EUR 3,500 claimed by the applicant in respect of his second lawyer was not substantiated with any evidence.

94. 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 documentary evidence submitted by the applicant concerned only the amount of EUR 3,000. The remainder of the applicant's claim is therefore not supported by any proof and must be dismissed. As regards the EUR 3,000 payable under the contract, the Court has previously dismissed a similar objection by the Government (see *Saghatelyan v. Armenia*, no. 7984/06, §§ 61-63, 20 October 2015). On the other hand, legal costs are only recoverable in so far as they relate to the violation found (see *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002). The Court notes that the majority of the applicant's complaints have been declared inadmissible. Hence, the legal costs claimed by the applicant cannot be awarded in full. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 to cover the costs under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 § 5 and Article 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 11,700 (eleven thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 March 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Linos-Alexandre Sicilianos President