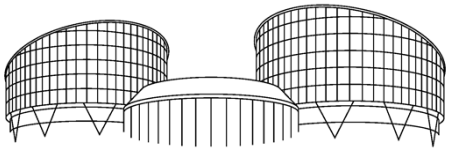

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DAVTYAN v. ARMENIA

(Applications nos. 54261/13 and 18361/16)

JUDGMENT

STRASBOURG

1 March 2022

This judgment is final but it may be subject to editorial revision.

In the case of Davtyan v. Armenia,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Jolien Schukking, *President,*
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 54261/13 and 18361/16) 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") on 17 August 2013 and 23 March 2016 respectively by an Armenian national, Mr Samvel Davtyan, born in 1968 and, at the material time, detained in Yerevan ("the applicant") who was represented by Mr K. Hakobyan, a lawyer practising in Yerevan;

the decision to give notice of the complaints concerning the applicant's alleged ill-treatment, the alleged failure to carry out an effective investigation and the fairness of the trial to the Armenian Government ("the Government"), represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 8 February 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's alleged ill-treatment and the alleged lack of an effective investigation. It also concerns the alleged unfairness of the applicant's trial as regards the reliance by the courts on his confession allegedly obtained under duress. It raises issues under Articles 3 and 6 of the Convention.

2. On 23 September 2011 at 8.30 a.m. the applicant was taken to the Principal Department for the Fight Against Organised Crime (PDFAOC) of the Armenian Police, where he was allegedly subjected to several hours of ill-treatment by police officers who started by hitting the applicant on various parts of his body. At 11.30 a.m. the applicant was questioned and placed under arrest by an investigator of the Principal Department for Investigations (PDI) of the Armenian Police. His ill-treatment allegedly continued thereafter, and included stripping him and handcuffing his hands and feet to a chair, beating him with rubber batons, administering electric shocks and kicking him on the soles of his feet, back, ribs and other parts of the body, demanding that he confess to a crime. At 11.30 p.m. the applicant was admitted to a police temporary holding facility where a number of injuries

were recorded, including "a wound and swelling on the left temple, reddish traces on the back, wounds on both shins, swelling of the right hand, swelling of both feet, and a wound on the right wrist". A notification of the applicant's injuries was sent to the PDI. On 24 September 2011 the PDI investigator questioned the applicant who confessed to the crime. On 1 October 2011 the PDI investigator examined the medical register of the temporary holding facility and on 3 October 2011 he questioned the applicant who refused to testify about his injuries. On 4 October 2011 the applicant was examined by a forensic medical expert, as ordered by the investigator, who confirmed part of the applicant's injuries, finding that they had been inflicted by a blunt hard object.

3. In October 2011 the applicant appointed a lawyer of his choosing who contested the results of the forensic medical examination, alleging the applicant's ill-treatment. On 6 April 2012 the PDI investigator took statements from two PDFAOC officers who had effected the applicant's arrest. Both made identical one-paragraph-long statements, denying the applicant's ill-treatment and alleging that the applicant had resisted arrest, resulting in the use of force and the applicant falling during the incident, which may have been the cause of his injuries. No questions were posed by the investigator. In June and July 2012 the applicant complained in detail to the General Prosecutor about his alleged ill-treatment and requested that his allegations be investigated by the Special Investigative Service (SIS). His complaint of July 2012 was forwarded to that authority which questioned the applicant on 15 August 2012 who insisted on his complaint and refused to answer questions about his injuries. On 23 August 2012 the SIS refused to institute criminal proceedings, citing the statements of the two PDFAOC officers and the applicant's refusal to testify and concluding that his injuries had resulted from the lawful use of force by the arresting officers who had tried to prevent the applicant's flight. The applicant's appeals against that decision were dismissed by the courts. Separately, the applicant was found guilty and sentenced to fifteen years' imprisonment in the trial against him. In doing so, the courts relied, *inter alia*, on the applicant's confession of 24 September 2011 and dismissed the applicant's requests to exclude that evidence.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

4. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

6. The general principles concerning the prohibition of ill-treatment and the obligation to carry out an effective investigation of such allegations have been summarised in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90, 100-01 and 114-23, ECHR 2015).

7. The Court considers it necessary to examine first the procedural aspect of Article 3. It notes that, once the applicant's injuries were discovered at the police temporary holding facility, a notification was sent to the PDI which, in the Court's opinion, was not an independent authority to investigate the applicant's injuries. Firstly, the PDI and the PDFAOC had an institutional connection, both agencies being part of the police system of Armenia. Secondly, the PDI was the authority investigating the criminal case against the applicant, moreover, in close cooperation with the officers of the PDFAOC who were alleged to have ill-treated him. Its investigators, while not directly implicated in the alleged ill-treatment, were nevertheless the officials who took the applicant's confession made allegedly as a result of that very ill-treatment. Thirdly, the Government themselves admitted that the impartial and competent authority in this case was the SIS. It follows that from the very outset the investigation was led by an authority which lacked the requisite independence.

8. The Court further notes that, despite being informed of the applicant's injuries already on or around 23 September 2011, it was not until 1 October 2011 that the PDI investigator took any actions in that respect by examining the relevant medical register. The applicant's examination by the forensic medical expert did not take place for another three days (see paragraph 2 above). Such delays in carrying out the applicant's medical examination by a qualified specialist must have resulted in loss of valuable evidence. Furthermore, it was not until 6 April 2012, that is more than six months later, that the investigator interviewed the two arresting police officers. The resulting statements contained brief identical texts lacking detail, without any questions being posed by the investigator, and cannot be considered a serious attempt to clarify the circumstances of the applicant's injuries (see paragraph 3 above).

9. The Court lastly notes that the investigation was eventually referred to the SIS by the General Prosecutor's Office in July 2012 with a delay of about ten months, after the applicant's repeated complaints. It appears that the only investigative measure taken by that authority was the applicant's questioning of 15 August 2012, followed almost immediately, namely on 23 August 2012, by the decision refusing the institution of criminal proceedings, which was based entirely on the above-mentioned statements of the two police officers,

despite the apparent shortcomings of that evidence and lack of impartiality of those witnesses. It is notable that throughout that entire period, since no criminal case was ever instituted, the applicant was not able to avail himself of the rights enjoyed by a victim in criminal proceedings. While the applicant was eventually able to contest the investigator's decision before the courts, the latter, when dismissing the applicant's appeals, did not conduct their own investigation of the facts surrounding his injuries and relied entirely on the evidence collected by the investigating authorities.

10. While arguing that the applicant had failed to make a credible assertion of ill-treatment, the Government, at the same time, admitted that the authorities had launched an inquiry into possible ill-treatment of their own motion having discovered the applicant's injuries. In such circumstances, it was their obligation to ensure that that matter received an adequate, prompt and impartial response. In this connection, it is also important to keep in mind the psychological effects that ill-treatment may have on its victims, including undermining their capacity to come forward (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 274, ECHR 2014 (extracts)). It is true that the applicant refused to testify when questioned about his injuries on 3 October 2011. The Court notes, however, that that questioning was held at a time when the investigation was led by the PDI and, moreover, was conducted by its investigator who had obtained the applicant's confession. Thus, his unwillingness to cooperate can be explained by the lack of impartiality of that authority and the distrust which the applicant must have felt towards the investigator. While the applicant's refusal to testify when later questioned by the SIS investigator may be less understandable, this, nevertheless, cannot serve as a justification for all the flaws in the investigation preceding that questioning or the hasty conclusions and closure of the investigation by the SIS almost immediately thereafter. It is notable that, while refusing to answer questions, the applicant did, however, insist on his rather detailed written complaint addressed to the General Prosecutor, while explaining his refusal to testify with loss of trust in the investigation after almost one year without any progress.

11. In the light of the above, the Court concludes that the authorities failed to conduct an effective investigation into the circumstances of the applicant's alleged ill-treatment.

12. As regards the substantive aspect of Article 3, the Government, relying on the results of the official investigation, alleged that the applicant's injuries had been sustained as a result of lawful and proportionate use of force by the police officers after he had resisted his arrest. The Court notes, however, that this conclusion was reached following a flawed and perfunctory investigation, as described above, and cannot be considered as credible and satisfactory. It was based entirely on the statements of the two arresting police officers, who were not impartial witnesses, and was not supported by any other evidence, including any medical assessments. It is

notable that no report was filed at the material time by the arresting police officers about any injuries sustained by the applicant during his arrest as required under section 29 of the Police Act (see *Mushegh Saghatelyan v. Armenia*, no. 23086/08, § 122, 20 September 2018), whereas the applicant consistently denied that version of events throughout the investigation.

13. In view of the above, the Court considers that the Government have failed to provide a plausible explanation for the applicant's injuries. In particular, it has not been shown that his injuries were the result of a use of force that had been made strictly necessary by his conduct (see *Bouyid*, cited above, § 100). The Court therefore concludes that the applicant has suffered inhuman and degrading treatment within the meaning of Article 3.

14. There has accordingly been a violation of Article 3 of the Convention in its substantive and procedural limbs.

III. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

15. The applicant also raised a complaint under Article 6 of the Convention which is covered by the well-established case-law of the Court. That complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. Accordingly, it must be declared admissible.

16. The Court refers to its case-law principles under Article 6 concerning the admission of statements obtained in breach of Article 3 of the Convention as evidence in criminal proceedings (see *Gäfgen v. Germany* [GC], no. 22978/05, § 166, ECHR 2010, and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 254, 13 September 2016). In the present case, the applicant confessed to a crime as a result of his ill-treatment. The fact that the applicant confessed to the PDI investigator and not the police officers who had ill-treated him is, in the Court's opinion, not decisive (compare *Harutyunyan v. Armenia*, no. 36549/03, § 65, ECHR 2007-III). Later that confession statement was relied on by the courts when finding the applicant guilty. This rendered the applicant's trial as a whole unfair, irrespective of the probative value of the statement in question and irrespective of whether its use was decisive in securing the applicant's conviction (see *Gäfgen*, cited above, § 166).

17. There has accordingly been a violation of Article 6 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage and 2,000,000 Armenian drams (AMD) in respect of costs and expenses incurred before the Court.

19. The Court awards the applicant 18,000 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable. It further considers it reasonable to award him EUR 2,000 for costs and expenses, plus any tax that may be chargeable to the applicant.

20. The Court further 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in its substantive and procedural limbs;

4. *Holds* that there has been a violation of Article 6 of the Convention as regards the fairness of the applicant's trial;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 18,000 (eighteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand 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;

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

Done in English, and notified in writing on 1 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Jolien Schukking President