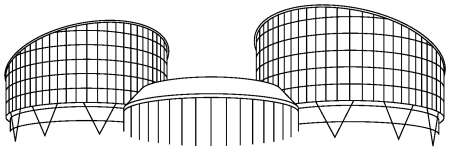

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZALYAN AND OTHERS v. ARMENIA

(Applications nos. 36894/04 and 3521/07)

JUDGMENT

STRASBOURG

17 March 2016

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 Zalyan and Others v. Armenia,

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

Mirjana Lazarova Trajkovska, *President,*
Ledi Bianku,
Kristina Pardalos,
Aleš Pejchal,
Robert Spano,
Pauliine Koskelo, *judges,*
Siranush Sahakyan, *ad hoc judge,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 23 February 2016,

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

PROCEDURE

1. The case originated in two applications (nos. 36894/04 and 3521/07) 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 three Armenian nationals, Mr Arayik Zalyan ("the first applicant"), Mr Razmik Sargsyan ("the second applicant") and Mr Musa Serobyan ("the third applicant") (jointly "the applicants"), on 23 September 2004 by the first applicant and 9 November 2006 by all three applicants jointly.

2. The applicants were represented by Mr H. Alumyan and Mr S. Voskanyan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicants alleged, in particular, that they had been subjected to torture during the period from 19 to 23 April 2004 and there had been no effective investigation into their allegations of ill-treatment. The first applicant further alleged that he had been unlawfully arrested from 19 to 24 April 2004, that he had not been informed about the reasons for his arrest, that he had not been brought promptly before a judge and that he had not been able to institute proceedings to contest the lawfulness of his arrest. The first applicant lastly alleged that his detention between 24 August and 4 November 2004 had been unlawful and that he had been denied requisite medical assistance while on hunger strike in detention.

4. On 11 October 2007 the applicants' complaints concerning the alleged ill-treatment and lack of effective investigation, and the first applicant's complaints concerning the alleged lack of requisite medical

assistance in detention and concerning his arrest and detention were communicated to the Government and the remainder of the applications nos. 36894/04 and 3521/07 was declared inadmissible. It was also decided to join the applications.

5. Mr Armen Harutyunyan, the judge elected in respect of Armenia, was unable to sit in the case (Rule 28 of the Rules of Court). Accordingly, the President of the Chamber decided to appoint Mrs Siranush Sahakyan to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1985 and live in Vanadzor and Gyumri, Armenia.

A. Background to the case

7. In May 2003 the applicants were drafted into the Armenian army and assigned to the third infantry battalion of military unit no. 33651, situated near the village of Mataghis in the Martakert Region of the unrecognised Nagorno Karabakh Republic (hereafter, Nagorno Karabakh) (see *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 28, 16 June 2015).

8. On 9 January 2004 the Martakert Garrison Prosecutor's Office instituted criminal proceedings no. 90800104 on account of the murder of two servicemen of the same military unit, R.Y. and H.M., who had been found dead in a nearby canal on 9 and 10 January 2004. They had been murdered on 24 December 2003.

9. An investigating team was created by order of the Military Prosecutor of Armenia, which was headed by investigator A.H. of the Military Prosecutor's Office of Armenia. The investigating team also included the investigator of the Gugark Garrison Military Prosecutor's Office of Armenia, S.T., the investigator of the Martakert Garrison Military Prosecutor's Office of Nagorno Karabakh, A.K., the Deputy Chief of the Yerevan Military Police Department, V.K., and the Chief of the Stepanakert Military Police Department of Nagorno Karabakh, A.B.

10. On 16 January 2004 a number of servicemen were arrested and subsequently charged and detained in connection with the murders. It appears that these charges were later dropped for lack of evidence.

11. By letter of 6 March 2004 the Military Police Chief of Armenia informed the Military Prosecutor of Armenia that three servicemen had testified and implicated three other servicemen, V.H., S.P. and G.Y., in the

crime but later retracted their testimony, alleging that they had made those statements under moral and psychological pressure from one of the officers of the Stepanakert Military Police Department and two officers of their military unit.

12. On 16 April 2004 the first and second applicants were assigned to keep watch at a military outpost.

13. On 19 April 2004 the investigative team received from one of the officers of military unit no. 33651 an empty envelope allegedly found at the crime scene on 25 December 2003, on which some names were written.

14. On 20 April 2004 a former serviceman of the same military unit, K.A., was questioned in this connection in the second applicant's home town of Gyumri. It appears that it was disclosed during this interview that the envelope in question was linked to the second applicant and had been included in a parcel sent to him by his parents at the end of December 2003. It further appears that this fact was confirmed during the questioning of the second applicant's younger brother, which took place on 21 April 2004 from 11 a.m. to 1.10 p.m.

B. The applicants' alleged deprivation of liberty of 19-24 April 2004 and their alleged ill-treatment

15. The applicants alleged that on 19 April 2004 they were taken, in turns, to the office of their military unit's commander, M.A., for questioning in connection with the murders. The questioning was carried out by investigators A.H. and S.T. and military police officers V.K. and A.B. Chiefs of the Third and Fourth Battalions, E.M. and I.V. respectively, were also present during part of the questioning. The law enforcement officers started beating, threatening and verbally abusing the applicants, forcing them to confess to the murders. On the same day, following their questioning, they were transported by these law enforcement officers to the Martakert Garrison Military Prosecutor's Office in Nagorno Karabakh by order of the Military Prosecutor of Armenia, where they continued to be ill-treated and were kept until their transfer to the Stepanakert Military Police Department for further questioning.

16. The Government contested these allegations and claimed that on 19 and 20 April 2004 the first and second applicants were on watch at a military outpost. It was only on 21 April 2004 that the second applicant was taken to the office of the commander of the military unit, M.A., for questioning as a witness in connection with the murders. Soon thereafter the commander of the military unit ordered the Chief of the Third Battalion, E.M., to bring also the first applicant from the military outpost for questioning as a witness. The third applicant was also taken for questioning. The questioning was carried out in the office of the commander of the military unit by employees of the military prosecutor's office and the

military police. During questioning it was revealed that on 24 December 2003 the applicants had abandoned their military unit without authorisation and had gone to Mataghis village. This was found to be a grave disciplinary offence and the commander of the military unit decided to impose on them a disciplinary penalty of ten days in isolation. On the same day, namely 21 April 2004, the applicants were taken first to the Martakert Garrison Military Prosecutor's Office and later to the Stepanakert Military Police Department where they were placed in a disciplinary isolation cell in order to serve their disciplinary penalty.

17. It appears from the materials of the case that the applicants' first questioning took place at their military unit, in the office of commander M.A., where they were taken in turns. The questioning was carried out by investigators A.H. and S.T. and military police officers V.K. and A.B. It appears that the Chief of the Fourth Battalion, I.V., was also present for part of the questioning. The applicants were asked questions about a parcel that the second applicant had received from his parents on 24 December 2003, which included food, letters and other items, whether they had eaten the food together after fetching the parcel from Mataghis and, if so, where and when. No record was made of this interview.

18. It further follows from the materials of the case that on 21 April 2004 the commander of the military unit, M.A., issued Order no. 112, according to which the applicants were considered to be isolated by the Stepanakert Military Police Department and were deprived of their daily allowance as of 22 April 2004. This Order was based on three Isolation Notices dated 21 April 2004 and signed by the commander, which stated that the applicants were to be isolated for a period of ten days on the grounds of a "VMR" (violation of military rules) and were to be kept in a common cell. In the section of the Isolation Notices entitled "Doctor's conclusion" the note "practically healthy" appeared, followed by the signature of doctor S. The sections of the Isolation Notices which were to include the signature of the chief of the disciplinary isolation cell and his notes regarding the time and date of the applicants' admission to and release from the disciplinary isolation cell were left blank.

19. On 21 April 2004 the applicants were questioned as witnesses at the Martakert Garrison Military Prosecutor's Office. According to the relevant records, the first applicant was questioned by investigator S.T. from 2.50 p.m. to 7.25 p.m., the second applicant was questioned by investigator A.K. from 2.35 p.m. to 7.40 p.m., and the third applicant was questioned by investigator A.H. from 2.05 p.m. to 7.20 p.m. The second applicant admitted during questioning that he and the other two applicants had eaten the food contained in the parcel received from his parents outside the military unit next to the canal on 24 December 2003. The first applicant was asked during questioning to provide an account of what he had done on 24 December 2003. He was then asked whether he was familiar with

servicemen R.Y. and H.M. and whether the nearby shop had still been open when he and the other two applicants had eaten the food, as well as two questions regarding the envelope of the letter which had arrived with the parcel.

20. Later that day at an unspecified hour the applicants were taken to the Stepanakert Military Police Department of Nagorno Karabakh where from 10.35 p.m. to 00.10 a.m. the second applicant was questioned as a witness by investigator A.H. The interview was videotaped by the cameraman of the Media Department of the Nagorno Karabakh Defence Army, A.G.

21. The applicants were kept at the Stepanakert Military Police Department until 23 April 2004. On that date the Military Prosecutor of Armenia issued a letter addressed to the Defence Minister of Nagorno Karabakh, with a copy to the Chief of Military Police of Armenia, the Chief of the Stepanakert Military Police Department and the commander of military unit no. 33651, having the following content:

> "For the purposes of criminal case no. 90800104 examined by the investigative unit of the Military Prosecutor's Office of Armenia, on 21 April 2004 [the applicants], who were performing their military service at military unit no. 33651, were taken to the Martakert Garrison Military Prosecutor's Office, whereupon they were taken to the Stepanakert Military Police Department.
>
> It is necessary to transfer the three above-mentioned servicemen to military unit no. 10724 in Yerevan in order to carry out a number of investigative measures with their participation."

22. On the same date the applicants were transferred to Yerevan, the second applicant separately from the first and third applicants. At 10.45 p.m. the officer on duty of the Military Police Department of Armenia drew up a record entitled "Receipt" in which it was stated that he had received the first and third applicants from the employees of the Stepanakert Military Police Department.

23. The applicants alleged that, during the entire period prior to their transfer to Yerevan, they were questioned on numerous occasions as witnesses, in spite of already being suspected of the crime. They were continually subjected to beatings, threats and verbal abuse by investigators A.H. and S.T., military police officers V.K. and A.B. and another officer of the Stepanakert Military Police Department nicknamed M., with the aim of extorting a confession. They were kept in various rooms and cells at different law enforcement agencies and were neither fed nor allowed to sleep. They were transferred from one law enforcement agency to another, blindfolded and handcuffed. The second applicant also alleged that the officers threatened to rape him with a club and to arrest his mother and younger brother, if he refused to confess.

24. The applicants further alleged that upon their arrival in Yerevan they remained in custody and at an unspecified point were placed in an arrest facility situated at military unit no. 10724 which was administered by the

military police (hereafter, the military police arrest facility – *ՀՀ Պաշտպանության նախարարության Ռազմական ոստիկանության վարչության քննչական մեկուսարան*) upon the instructions of the investigator.

25. The Government admitted that the applicants had been transferred to Yerevan upon the request of the Military Prosecutor on 23 April 2004, but claimed that this was done as a protective measure under Article 98 of the Code of Criminal Procedure (CCP). They further claimed that the applicants were placed in the military police arrest facility only after their arrest on 24 April 2004.

C. The applicants' formal arrest on 24 April 2004 and their indictment

26. On 24 April 2004 from 10.45 a.m. to 3.10 p.m. the second applicant was questioned as a witness by investigator A.H. at the Military Prosecutor's Office of Armenia. This interview was videotaped. During the questioning, the second applicant confessed that it was he and the other two applicants who had committed the murders. According to his statement, on 24 December 2003 he and the other two applicants had left their military unit in order to eat in private the food sent by his parents, near the canal. There they had come across the two fellow servicemen. A quarrel had erupted which led to a fight and resulted in fatal injuries. Having realised that the two fellow servicemen were dead, he and the other two applicants had decided to throw their bodies into the canal.

27. On the same date the applicants were formally arrested and recognised as suspects. The first applicant's arrest record was drawn up at 6.35 p.m. at the Military Police Department in Yerevan. The record indicated that he was suspected of complicity in the murder of the two servicemen.

28. It appears that investigator A.H. invited lawyers M.A. and V.Y. to represent the applicants. M.A. was assigned to represent the second applicant, while V.Y. was assigned to the first and third applicants. The first applicant agreed in writing that his interests be represented by lawyer V.Y.

29. Later that day the applicants were questioned separately as suspects in the presence of their lawyers. Furthermore, two separate confrontations were held between the second applicant and the first and third applicants respectively, both in the presence of the lawyers. During his questioning and the above confrontations, the second applicant confirmed his earlier confession, while the other two applicants denied their guilt and his account of events.

30. The applicants alleged that the above-mentioned lawyers had been invited to join the case by the investigators of the Military Prosecutor's

Office and their involvement in the case was merely a formality and amounted to the signing of records and other documents in order to create an appearance of lawfulness. The first applicant also alleged that he had never met with his lawyer in private, while the second applicant alleged that his lawyer, M.A., had not been chosen by him and neither he nor his family had given their consent to the lawyer's participation in the case.

31. On the same day at an unspecified hour the officer on duty of the military police arrest facility drew up a record of examination of a person's body (*արձանագրություն անձին մարմնի զննության ենթարկելու մասին*) in respect of each applicant, which noted that he, together with two deputy officers, two attesting witnesses, V.V. and K.A. (male and female respectively), and the medical assistant on duty (*հերթապահ բուժակ*), K.G., examined the applicants' bodies and that "nothing was detected on [them]". The time of the examinations was indicated as "9.55 p.m.", "10.05 p.m." and "10.10 p.m." for the second, third and first applicants respectively. The respective records were signed by the applicants and everybody else involved. The Government alleged that these examinations had been carried out upon the applicants' admission to the military police arrest facility.

32. On 26 April 2004 the applicants were formally charged with murder under Article 104 of the Criminal Code. The applicants were questioned as accused in the presence of lawyers V.Y. and M.A. It appears that later that day the first and third applicants dispensed with the services of lawyer V.Y.

33. On the same date the third applicant was visited by his father and his cousin's husband, H.M. It appears that this visit took place in investigator A.H.'s office and lasted a few minutes.

34. On the same date investigator A.H. took a decision prohibiting the applicants from meeting with their relatives on the ground that it "might obstruct the interests of the criminal investigation".

D. The applicants' detention, the investigation into their criminal case and their ill-treatment related complaints made during the investigation

35. On 27 April 2004 at an unspecified hour the Arabkir and Kanaker-Zeytun District Court of Yerevan examined and granted the investigator's motions seeking to have the applicants detained on remand. It appears that the motions were presented at the hearings by the investigators dealing with the case, in the first applicant's case this being investigator A.H. The applicants were present at their respective hearings. It appears that the second applicant, who was represented by lawyer M.A., admitted at the hearing that he and the others had beaten the two fellow servicemen, but had no intention of killing them. It further appears that the first applicant was

not represented at his hearing. The record of the hearing stated that lawyer V.Y. had been duly notified but had failed to appear. The applicants' detention was to be calculated from 24 April 2004 and was valid for a period of two months.

36. On 29 April 2004 the second applicant was taken to the crime scene in Mataghis for a reconstruction of the crime, which was videotaped.

37. On 11 May 2004 the second applicant addressed a letter to the Military Prosecutor of Armenia in which he retracted his confession, claiming that he and the other two applicants had nothing to do with the murder. He submitted that he had made his confession because the investigator A.H. had informed him that his mother and younger brother had been arrested and were also held at the Military Prosecutor's Office of Armenia and had threatened that they would "come to harm". The investigator further threatened that his younger brother would be assigned to perform his military service at the same military unit and would "come to harm". The second applicant requested that he be questioned again.

38. On 14 May 2004 a lawyer, Z.P., was hired by the first applicant's family to represent his interests.

39. On 18 May 2004 the second applicant was questioned by investigators A.H. and S.T. in the presence of lawyer M.A. He was asked questions about his letter of 11 May 2004, including whether it had been his idea to write that letter, why he had not written it earlier, whether it had been dictated to him, whether he stood by his allegations and why he had not retracted his confession earlier when he had other chances to do so. The second applicant again denied their involvement in the murder and repeated his allegation that he had made his confession since he had been told that his mother and younger brother had been arrested. In reply to the investigator's question about whether anyone had forced or coerced him into making the confession, the second applicant replied that no one had forced him. In reply to the investigator's question about why he had made a false confession, he replied that when he had told the truth the investigators refused to believe him.

40. By letter of 19 May 2004 investigator A.H. informed the chief of the military police arrest facility that the first applicant's interests were represented by lawyer Z.P.

41. On 21 May 2004 the applicants were examined by a board of psychiatrists in order to evaluate whether they were competent to stand trial. They were found not to suffer from any mental health issues either at the time of the offence or at present.

42. On 25 May 2004 the chief of the military police arrest facility instructed the staff of the facility that lawyer Z.P. had been authorised to represent the first applicant. It appears that the lawyer was allowed to visit the first applicant at the facility. The first applicant alleged that, prior to his

first meeting with lawyer Z.P., he had been deprived of any contact with the outside world and of any legal assistance.

43. On the same date the first applicant addressed a complaint to various authorities, including the General Prosecutor, the Military Prosecutor and the Ombudsman, indicating the number of his criminal case and informing them of the following:

> "I, Arayik Zalyan, and my two conscript friends, Razmik Sargsyan and Musa Serobyan, are kept at a military police arrest facility and are falsely accused of a grave crime[, namely] the murder of [servicemen H.M. and R.Y.].
>
> On 19 April 2004 I and Razmik Sargsyan were at a military outpost when Razmik received a call from the military unit and was told to come down because his parents had arrived. About an hour later I also received a call and was told that my parents had also arrived and was summoned to the military unit. I went down and was taken to the commander's office. In the corridor I saw Musa Serobyan who was standing hunched in the corner. There were four unfamiliar persons in the office, two of whom – as I later found out – were investigators [A.H. and S.T.] of the Military Prosecutor's Office of Armenia. Chief of the Third Battalion [E.M.] and Chief of the Fourth Battalion [I.], whose last name I do not remember, were also present. The two investigators, [A.H. and S.T.], assaulted me, calling me a "murderer", demanding that I tell with whom I had eaten on 24 December, beating me and demanding that I explain how we murdered servicemen [H.M. and R.Y.]. I was beaten so hard that my nose bled profusely. The Chief of the Fourth Battalion [I.] then helped me and took me to clean my nose. Thereafter I, Musa Serobyan and Razmik Sargsyan were forced to put our T-shirts over our heads, placed in a car and taken away. We arrived in some place, which – as I later found out – was Martakert. I was taken to a room where I stayed with my T-shirt pulled over my head for about an hour and from where I could hear Razmik's and Musa's terrified voices and how they were beaten continuously for about an hour. Then it was my turn. [Investigator S.T.] came to my room, started questioning me, saying that my friends had confessed that we had committed the murder, told me to write the same thing and intimidated me, saying that I would not last long and that I would get a life sentence. At that moment some Major entered the room and said that the deceased were his friend's children and if we did not write the truth – that we had killed them – he would take me out, kill me, throw me in a pit and say that it was the [Azeris] who had killed me. Thereafter, again with our T-shirts over our heads, we were taken away ... and arrived in some place where I was taken to what appeared to be a police station where I was questioned from 6.00 p.m. to 3.00 a.m. I was questioned, sworn at, beaten, threatened, persuaded and told to write that it was us who had killed [H.M. and R.Y.]. They beat and threatened us for a whole day, not even giving us water to drink. That night at around 3.30 a.m. I was taken down to the Stepanakert Military Police Department's detention facility, where there were three other persons... I, Musa and Razmik were kept in that facility until the morning of 23 April. Musa and I were taken to Yerevan together by a senior lieutenant of the military police department. I realised that Musa had been severely beaten since his face was covered with red and blue marks of blows. We spent the night of 23 April 2004 in Yerevan on the premises of the military police in a room of some supervised unit where we stayed for one night. Musa and Razmik were also there and were kept in separate rooms. The next day I was questioned in the same building and then taken to a confrontation with Razmik. When I saw Razmik, I could hardly recognise him since his entire face was swollen. I realised that he had been beaten and was extremely frightened of the investigators, which is why he gave false testimony.

I ask you to carry out an investigation and to find the real perpetrators ...”

44. On 8 June 2004 lawyer Z.P. addressed another complaint to the same authorities, submitting that the applicants had been unlawfully arrested between 19 and 24 April 2004 without an arrest warrant and questioned on numerous occasions on suspicion of having committed a murder. The lawyer further complained in detail about the ill-treatment inflicted on the applicants during that period. She also complained that from 23 April 2004 to the present the applicants, in violation of the law, had been kept at a military police arrest facility, despite their pre-trial detention having been ordered by the court decision of 27 April 2004. Thus, they were deprived of the protection offered by the justice system and were kept under the authority of the military police who were, moreover, working in close cooperation with the Military Prosecutor’s Office. She alleged, *inter alia*, a violation of Articles 3 and 5 of the Convention.

45. By a letter of 10 June 2004 the Military Prosecutor informed the first applicant and his lawyer, in reply to their complaints, that:

“The first investigative measures involving [the applicants] were carried out on 21 April 2004 at the Martakert Garrison Military Prosecutor’s Office where they were questioned as witnesses. Before the questioning they had been informed about the right not to testify against themselves ... guaranteed by Article 42 of the Constitution.

In order to clarify a number of discrepancies in their statements, on 21 April 2004 [the applicants] were taken to the Stepanakert Military Police Department of the Ministry of Defence of Armenia for the purpose of conducting confrontations and further questioning.

On 22 April [the second applicant], upon my instruction, was transferred to Yerevan as a witness in a criminal case, since I found it inexpedient for him to continue his military service at his military unit. In Yerevan he stayed in the barracks together with the servicemen entrusted with guarding the building of the Military Prosecutor’s Office of Armenia.

[The first and third applicants] were transferred to Yerevan from Stepanakert on the night of 23-24 April and stayed, without being isolated, in the room envisaged for servicemen on duty of military unit no. 10724...

On 24 April [the second applicant] was questioned again as a witness and he was again informed about the requirements of Article 42 of the Constitution, which is confirmed by his signature under the record of the interview.

[The applicants] were arrested on 24 April 2004 and were immediately provided with lawyers.

From the moment of their arrest all the investigative measures in respect of [the applicants], such as questioning, confrontations, the arraignment, etc., were carried out in the presence of their lawyers.

In compliance with [the CCP] the accused took part in the hearings concerning the imposition of detention, during which they did not make any statements about the ‘ill-treatment inflicted’ on them...

The accused are kept in the military police arrest facility in accordance with Annex 14 to the Regulations for the Garrison and Sentry Services.

A medical examination can be conducted in respect of [the first applicant] and the others if a relevant request is made."

46. On 10 June 2004 the second applicant's lawyer M.A. filed a motion with the Military Prosecutor, challenging the impartiality of investigator A.H. and requesting that he be removed from the case. It appears that attached to this motion was a complaint by the second applicant, in which he alleged that the investigator and others had bullied and beaten him in Martakert and Stepanakert, as a result of which he had made a false confession. The lawyer requested that the persons mentioned in the second applicant's complaint be questioned.

47. On 12 June 2004 the Military Prosecutor decided to reject the motion as unsubstantiated, finding that all the investigative measures involving the second applicant had been carried out in compliance with the rules of criminal procedure. From the moment of his arrest his lawyer had participated in all the investigative measures, except the reconstruction of 29 April 2004 in which case the lawyer's absence had been voluntary. Most of the second applicant's interviews had been videotaped, which further proved that no ill-treatment had been inflicted on him. Moreover, at the detention hearing of 27 April 2004 he had stated that his statements made at those interviews had been true. Following his complaint of 11 May 2004 he had been additionally questioned upon his request and stated that he had not been forced to make any statements.

48. On 14 June 2004 the first applicant's lawyer Z.P. filed a similar motion with the Military Prosecutor, challenging the impartiality of investigators A.H. and S.T. and requesting that they be removed from the case on the ground that they had, *inter alia*, ill-treated the applicants.

49. On 16 June 2004 the third applicant's new lawyer, A.A., filed a similar motion with the Military Prosecutor, challenging the impartiality of investigator A.H. and requesting that he be removed from the case on the ground that the investigator had, *inter alia*, ill-treated the third applicant in Stepanakert, including by administering blows to his head with the handle of his pistol.

50. On 17 June 2004 the Arabkir and Kanaker-Zeytun District Court of Yerevan examined and granted the investigator's motions seeking to extend until 24 August 2004 the period of the applicants' detention, which was to expire on 24 June 2004. The first applicant submitted at the court hearing that his and the second applicant's testimony had been given under duress.

51. On 18 June 2004 the Military Prosecutor decided to reject the motion of 14 June 2004 as unsubstantiated, finding that the first applicant had been questioned on 21 April 2004 in compliance with all the rules of criminal procedure, including being informed about the right not to testify against himself guaranteed by Article 42 of the Constitution. No investigative measures involving the first applicant had been carried out on 19 and 20 April 2004. He was arrested on 24 April 2004 and was

immediately provided with a lawyer. Neither he nor the third applicant had complained about ill-treatment prior to a similar complaint made by the second applicant. The foregoing indicated that the allegations of ill-treatment made by the accused and their lawyers were unsubstantiated, concocted and were aimed at justifying the accused, who were employing coordinated common tactics.

52. On the same date the Military Prosecutor rejected the third applicant's motion of 16 June 2004 on similar grounds.

53. On 25 June 2004 the first applicant lodged an appeal against the decision of 17 June 2004. In his appeal he complained in detail, *inter alia*, that he and the other applicants had been subjected to ill-treatment by investigator A.H. and other law enforcement officers. The first applicant also complained that he and the other applicants were unlawfully kept at a military police arrest facility.

54. On 29 and 30 June 2004 the second applicant was questioned again. At the outset he was asked questions in connection with the allegations of ill-treatment raised in his complaint of 10 June 2004, namely whether he had suffered any injuries and whether he still had any injuries. The second applicant stated that he had suffered only a swollen jaw, which healed in about three to four days, still being visible at the time of his arrest on 24 April 2004 but not when he had appeared before a judge on 27 April 2004. Currently he had no injuries. The injury to his jaw had been inflicted at the office of the commander of the military unit in Mataghis on 21 April 2004 by S.T., A.H., police officer V.K. and one tall police officer from the Stepanakert Police Department. The same persons had continued to ill-treat him at the Military Prosecutor's Office in Martakert and the Military Police Department in Stepanakert, which made his kidneys hurt and lasted a few days. He had had no other injuries and nobody had ill-treated him following his transfer to Yerevan. When ill-treated, he was being ordered to tell the truth. He had made up the confession himself, without any outside interference. The second applicant was then asked a number of questions in connection with his allegations, including why he had made his confession in Yerevan if no ill-treatment had been inflicted on him there and why he had not raised his allegations of ill-treatment earlier. Lastly, a number of questions were posed about the events of December 2003 and the murder.

55. On 5 July 2004 the investigation into the applicants' criminal case was over.

56. On 6 July 2004 the Criminal and Military Court of Appeal dismissed the first applicant's appeal of 25 June 2004.

57. On the same date the Military Prosecutor addressed a letter to the chief of the military police arrest facility, stating that it was no longer necessary to keep the applicants at the arrest facility and requesting that they be transferred to Nubarashen pre-trial detention facility.

58. On the same date the applicants were transferred from the military police arrest facility to Nubarashen pre-trial detention facility.

59. On 7 July 2004 the first applicant was subjected to a medical examination at Nubarashen pre-trial detention facility, with the following conclusion:

> "No fresh bodily injuries or traces of beatings have been disclosed. Skin and mucous membranes are of a normal colour. Vesicular respiration present in the lungs. Heart sounds [(illegible)] ... The abdomen is soft and pain free. There are no external symptoms of venereal disease."

60. Medical file no. 607 was opened. On the front page of the medical file "19 April 2004" was noted as the starting date of the first applicant's detention.

61. It appears that the second and third applicants were also subjected to medical examinations and no injuries were recorded.

62. On 16 July 2004 the General Prosecutor decided to reject another motion filed by the first applicant challenging the impartiality of both the Military Prosecutor and investigators A.H. and S.T., on the ground that, *inter alia*, the allegations of ill-treatment had not been confirmed. No such allegations had been made by the applicants at the court hearings concerning their detention and they had jointly started raising such complaints only at the end of May 2004.

63. On 22 July 2004 the Deputy Ombudsman informed the General Prosecutor about the second applicant's allegations of ill-treatment. The Deputy Ombudsman further stated that the second applicant had been kept from 26 April to 6 July 2004 at a military police arrest facility in violation of the Law on Conditions for Holding Arrestees and Detainees and the Regulations for the Garrison and Sentry Services. The Deputy Ombudsman argued that, according to these legal acts, the second applicant should not have been kept at that facility for more than 72 hours after the court issued its decision to detain.

64. On 26 July 2004 the Deputy Ombudsman was informed by the General Prosecutor's Office that the accused had been kept at the military police arrest facility on the basis of Annex 14 to the Regulations for the Garrison and Sentry Services and had been transferred to Nubarashen pre-trial detention facility following the entry into force of the amendments to those Regulations adopted by the Parliament on 28 April 2004 and ratified by the President on 22 May 2004.

65. On 24 September 2004 the Deputy Ombudsman addressed a letter to the General Prosecutor in connection with the first applicant's complaint of ill-treatment. The Deputy Ombudsman pointed out that the above complaint had been transmitted to the Military Prosecutor's Office, the authority whose actions were the subject of the complaint, and the criminal case continued to be dealt with by the same investigator who was alleged to have inflicted ill-treatment on the accused.

E. The first applicant's detention from 24 August to 4 November 2004 and his hunger strike

66. On 3 August 2004 the first applicant made a written statement, declaring that he was going on a hunger strike in protest against the unlawful actions of the law enforcement authorities. He alleged that the charges against him and the others were trumped up and based on a coerced confession. Since all his complaints in this respect had remained unanswered, he wished to continue his protest with a hunger strike.

67. The following record was made in the first applicant's medical file:

> "Since 11 August 2004 the patient has been on hunger strike and under constant medical observation ..."

68. On 5 August 2004 the first applicant and his lawyer were granted access to the case file.

69. By a letter of the same date the investigator informed the chief of Nubarashen pre-trial detention facility about this and added that the first applicant's detention period was suspended pursuant to Article 138 § 3 of the CCP.

70. On 24 August 2004 the first applicant's detention period, as extended by the decision of 17 June 2004 of the Arabkir and Kanaker-Zeytun District Court of Yerevan, expired.

71. On 9 September 2004 the first applicant and his lawyer finished familiarising themselves with the materials of the case.

72. On the same date the first applicant filed a motion with the investigator, arguing that from 24 August 2004 there was no court decision authorising his detention and requesting that he be released.

73. On 10 September 2004 the investigator decided to dismiss that motion, stating that, pursuant to Article 138 § 3 of the CCP, the detention period had been suspended on the date when the first applicant was granted access to the case file, namely 4 August 2004.

74. On 16 September 2004 the first applicant's mother asked to be allowed to visit him in detention. She was worried about his health, as he was on hunger strike, but she was not allowed to see him.

75. On 22 September 2004 the case file was transmitted by the Prosecutor to the Syunik Regional Court, which sat in Stepanakert, Nagorno Karabakh.

76. On an unspecified date Judge M. of the Syunik Regional Court decided to take over the case.

77. By a letter of 15 October 2004 the chief of Nubarashen pre-trial detention facility informed the first applicant that his detention period had been suspended in accordance with, *inter alia*, Article 138 of the CCP by the letter of the Military Prosecutor's Office of 5 August 2004. The chief of the detention facility further stated that, according to the Military

Prosecutor's letter of 22 September 2004, as of that date the detention period had been accounted for by the Syunik Regional Court.

78. On 19 October 2004 the first applicant was transferred to the Hospital for Prisoners due to his general emaciation as a result of the hunger strike.

79. On the same date the first applicant's lawyer addressed a letter to various public authorities, including the prosecutor in charge of the detention facilities and the Chief of the Hospital for Prisoners, complaining that the first applicant was unlawfully detained without a relevant court decision. She further submitted that the first applicant's state of health was critical and that no requisite medical assistance had been provided for him by the administration of Nubarashen pre-trial detention facility during the entire hunger strike. The lawyer requested that the first applicant be released immediately.

80. By a letter of 21 October 2004 the Deputy Chief of the Hospital for Prisoners informed the lawyer that no visceral illnesses had been disclosed following the first applicant's objective inpatient examination, clinical and biochemical analyses of his blood and urine, and a number of instrumental examinations. There was therefore no need to administer medicine. The first applicant was under constant medical supervision due to his hunger strike and the resulting general emaciation of a minor degree.

81. On 25 October 2004 the lawyer lodged similar requests with the Kentron and Nork-Marash District Court of Yerevan and the Syunik Regional Court.

82. By a letter of 26 October 2004 the General Prosecutor's Office informed the first applicant's lawyer that he had not been released from detention by virtue of Article 138 § 3 of the CCP.

83. On 27 October and 1 November 2004 the lawyer again requested the Kentron and Nork-Marash District Court of Yerevan to release the first applicant. She also submitted that she had visited him on 25 October 2004 at the Hospital for Prisoners. He had been lying in bed motionless and looked frail. She further alleged that the psychologist had told her that, if the first applicant continued to remain isolated on hunger strike, his life could be in serious danger. She lastly complained that he had been ill-treated when questioned as a witness.

84. By a letter of 27 October 2004 the District Court informed the first applicant's lawyer that, in order to have the circumstances of the alleged unlawful methods of investigation examined, she had to apply to the authority dealing with the merits of the case. The District Court was not, however, dealing with the merits of the first applicant's case.

85. On 1 November 2004 the lawyer requested the administration of the Hospital for Prisoners to provide details of the treatment provided for the first applicant.

86. By a letter of 2 November 2004 the Deputy Chief of the Hospital for Prisoners informed her that the first applicant had undergone an examination and no visceral illnesses had been found. Due to his general emaciation, since 22 October 2004 the first applicant had been receiving intravenous injections of 5% glucose and vitamins in order to sustain water and vitamin balance. In his current state of health the first applicant was fit to be transferred to a detention facility.

87. On 2 November 2004 the first applicant was discharged from the Hospital for Prisoners and transported to Stepanakert, Nagorno Karabakh, to participate in the trial. According to the discharge summary:

> "[The first applicant] was taken to the Hospital for Prisoners on 19 October 2004 in order to undergo an inpatient examination.
>
> The detainee underwent a clinical and laboratory instrumental examination, as a result of which no symptoms of visceral illnesses were found. He was examined by a psychiatrist who concluded that he had no psychological disorders.
>
> Taking into account his refusal to eat over a long period of time and the general emaciation of his organism, the detainee was injected with glucose and vitamins through a drip.
>
> Since inpatient treatment is no longer necessary, the detainee is being discharged to remain under further medical supervision by the medical staff of the detention facility."

88. On 4 November 2004 Judge M. of the Syunik Regional Court decided to set the case down for trial and to fix the date of the first court hearing, which was to take place on an unspecified day in November 2004. The judge stated in his decision that the first applicant's detention was to remain unchanged.

89. On 5 November 2004 the first applicant ended his hunger strike.

90. On 26 November 2004 the first applicant's lawyer applied to the Chief of the Nagorno Karabakh Remand Centre, claiming that the first applicant's state of health was unsatisfactory following his hunger strike and requesting that he be examined by a doctor. It is not clear whether there was any follow-up to this request.

F. Allegations of ill-treatment raised by the applicants during their trial

1. The proceedings at first instance

91. In November 2004 the court hearings in the applicants' criminal case commenced at the Syunik Regional Court.

92. The second applicant submitted before the Regional Court that on 19 April 2004 he had been taken to the office of the military unit commander M.A. The Chief of the Fourth Battalion I.V. had also been present. The commander had started asking him questions about a parcel

that he had received from his parents on 24 December 2003, including where and with whom he had eaten the food contained in that parcel. He had answered that he had eaten the food with the other two applicants at the military unit, but the commander did not believe him. Thereafter investigators S.T. and A.H. and military police officers V.K. and A.B. had entered the office and started beating him and forcing him to admit that it was he and the other two applicants who had killed the two servicemen. Then the other two applicants had been brought and subjected to beatings. The ill-treatment had continued at the Martakert Garrison Military Prosecutor's Office and the Stepanakert Military Police Department. Not being able to stand the ill-treatment, he had had to come up with a false story, admitting his and the others' guilt. Later on he had realised his mistake and asked to be questioned again, during which he retracted his earlier confession.

93. The first and third applicants submitted that they had been ill-treated in similar circumstances.

94. The Regional Court called and examined investigators A.H., S.T. and A.K. and military police officers V.K. and A.B.

95. Investigator A.H. submitted that he and the other members of the investigating team had arrived at the military unit near Mataghis on 21 April 2004. Upon his instructions the second applicant had been brought from the military outpost to the military unit, since it was necessary to find out where and with whom he had eaten the food contained in the parcel received from his parents. The first and third applicants were also later brought in for questioning. In order to verify the versions of events presented by the applicants, the latter had been transferred to Martakert and then to Stepanakert where further interviews were conducted. Thereafter the applicants had been transferred to Yerevan where the second applicant confessed to the crime.

96. Investigator S.T. and military police officers V.K. and A.B. made similar submissions.

97. Investigator A.K. submitted that he had questioned the second applicant at the Martakert Garrison Prosecutor's Office but did not know about the outcome of that interview since investigator A.H. and military police officer V.K. had taken over and he had left.

98. The applicants submitted in reply that investigators A.H. and S.T. and military police officers V.K. and A.B. had ill-treated, beaten and threatened them.

99. The Regional Court also called and examined Chiefs of the Third and Fourth Battalions E.M. and I.V., cameraman A.G. and an officer of military unit no. 33651, M.A., who had been present at the reconstruction of the crime on 29 April 2004.

100. I.V. submitted that he had been present on and off during the applicants' questioning on 21 April 2004 but nobody had ill-treated them in his presence.

101. E.M. submitted that he had personally delivered the first applicant to the office of the military unit commander on 21 April 2004. The second applicant was already there. Thereafter the law enforcement officers had arrived and he had to leave. Nobody had ill-treated the applicants in his presence.

102. A.G. submitted that he had been present during the second applicant's questioning at the Stepanakert Military Police Department and no beatings or violence had been inflicted on the second applicant by investigators A.H. and S.T. or military police officer A.B. Nor did he notice any injuries on the second applicant or bloodstains on the floor.

103. M.A. submitted that he had been present during the reconstruction of the crime by the second applicant in April 2004. The reconstruction had been filmed by investigator A.H. The second applicant had been calm and no ill-treatment or violence had been inflicted on him.

104. On 18 May 2005 the Syunik Regional Court found the applicants guilty of murder and sentenced them to 15 years' imprisonment. This judgment was based, *inter alia*, on the second applicant's confession statement. As regards the applicants' allegations of ill-treatment, the Regional Court found them to be unsubstantiated on the following grounds. First, the applicants had not raised any such complaints during their questioning as witnesses on 21 April 2004, during their questioning as suspects and as accused and the two confrontations which were held on 24 and 26 April 2004 in the presence of their lawyers, or during the reconstruction of the crime on 29 April 2004. Second, the second applicant had not raised such allegations even during his additional questioning on 18 May 2004 and did so only in his motion of 10 June 2004, which was followed by similar motions filed by the first and third applicants on 16 June 2004, all of which were dismissed by the Military Prosecutor as unsubstantiated. Third, the fact that no ill-treatment had been inflicted on the applicants was confirmed by the submissions of law enforcement officers A.H., S.T., V.K. A.B. and A.K., Chiefs of the Third and Fourth Battalions E.M. and I.V. and officer M.A. The Regional Court concluded that the motions filed by the applicants and their lawyers, challenging investigator A.H.'s impartiality, and their allegations of ill-treatment, threats and psychological pressure were aimed at helping the applicants to avoid criminal responsibility.

2. The appeal proceedings

105. On 1 June 2005 the applicants lodged an appeal against the judgment of the Syunik Regional Court. In their appeal they complained in detail that they had been unlawfully deprived of their liberty from 21 to

24 April 2004 and subjected to ill-treatment during that entire period. They further complained that the authorities had failed to investigate their allegations of ill-treatment in violation of Article 3 of the Convention. Moreover, instead of ordering the institution of criminal proceedings, the Regional Court decided to call and examine the alleged perpetrators as witnesses and to rely on their statements in justifying the conviction.

106. On an unspecified date, the proceedings commenced in the Criminal and Military Court of Appeal. The applicants repeated in detail their allegations of ill-treatment before the Court of Appeal. They also added that at the time of their admission to the military police arrest facility in Yerevan they had various bodily injuries, including an injured jaw, a bruised eye and a bruised back. They were stripped and examined, but the member of the medical staff who had drawn up the relevant records did not note those injuries. They had signed the records drawn up as a result of these examinations without reading them.

107. In this connection the Court of Appeal called and questioned medical assistant K.G. who had participated in the examination of the applicants' bodies at the military police arrest facility. K.G. submitted that the applicants had been admitted to the arrest facility when he was on duty. They had been examined in the presence of witnesses and no bodily injuries had been found. Appropriate records had been drawn up, which were signed also by the applicants. K.G. further submitted that it was impossible for him to fail to record any injuries found, since he would be held personally responsible for such an omission. Nor was it possible for the second applicant to have had an injured jaw, since that was a serious injury which he could not have overlooked.

108. On 12 December 2005, while their case was still being examined by the Court of Appeal, the applicants lodged another complaint with the General Prosecutor, alleging in detail that they had been deprived of their liberty from 19 to 24 April 2004 and subjected to ill-treatment for the purpose of coercing a confession. They indicated investigators A.H. and S.T. and military police officers V.K., A.B. and M. as the perpetrators and requested that criminal proceedings be instituted against them. The applicants alleged, in particular, that as a result of ill-treatment the second applicant had an injured jaw, the first applicant had a bleeding nose and the third applicant was beaten up and had dirty clothes, having been thrown to the floor and repeatedly kicked. Furthermore, the second applicant was stripped, leaned against the wall and threatened that, if he refused to confess, he would be raped with a club. Thereafter, he was forced to hang on a rod placed on chairs and was threatened with clubs and weapons. When being beaten during his questioning in the office of the chief of Stepanakert Military Police Department A.B., a large amount of blood dripped from the second applicant's nose onto the floor and he was ordered to lick it off. The applicants finally alleged that they had been kept unlawfully at the military

police arrest facility until 6 July 2004 in order to be subjected to further threats and abuse.

109. By a letter of 26 December 2005 the General Prosecutor's Office informed the applicants that, during the court examination of the criminal case against them, the Syunik Regional Court, guided by Article 17 § 4 of the CCP, had taken the necessary measures to verify the statements alleging that they had been subjected by the investigators to coercion during the investigation, and found them to be unsubstantiated in its judgment of 18 May 2005.

110. On 8 January 2006 the applicants lodged a complaint with the Kentron and Nork-Marash District Court of Yerevan under Article 290 of the CCP, complaining that the Prosecutor's Office, by relying on the examination carried out by the Syunik Regional Court, was refusing to institute criminal proceedings. However, the Syunik Regional Court was not competent to carry out examinations outside the scope of the criminal case before it. The alleged perpetrators were not involved as accused and appeared before the Regional Court only as witnesses. In order to carry out an effective investigation of the allegations of ill-treatment, it was necessary to institute criminal proceedings under Article 181 of the CCP. They requested the District Court to oblige the General Prosecutor to institute such proceedings.

111. On 1 February 2006 the Kentron and Nork-Marash District Court of Yerevan dismissed the complaint, finding that the General Prosecutor's reply was in conformity with the law and did not violate the applicants' rights. The District Court stated, in particular, that complaints alleging a violation of lawfulness in the course of criminal proceedings, pursuant to Article 17 § 4 of the CCP, were to be thoroughly examined by the authority dealing with the merits of the case, while statements about a crime made during a court hearing, pursuant to Article 177 of the CCP, were to be entered into the record of the court hearing.

112. On 14 February 2006 the applicants lodged an appeal, raising similar arguments to those in their complaint of 8 January 2006.

113. On 14 March 2006 the Criminal and Military Court of Appeal upheld the decision of the District Court, finding that the applicants' allegations of ill-treatment had been examined during the proceedings before the Syunik Regional Court and the evidence obtained was evaluated in the ensuing judgment. The case was currently being examined on the merits by the Criminal and Military Court of Appeal, which was not constrained by the appeal and was competent to examine the full scope of the case, including any new evidence. The applicants' argument that the Regional Court and the Court of Appeal were not competent to conduct proceedings in respect of persons who had not been involved as accused was incorrect, since the courts, in adopting their judgments, were obliged under the criminal procedure law to verify and assess whether the evidence

obtained was admissible and relevant and whether or not it had been obtained through violence, threats and other unlawful actions of the police officers as alleged in the applicants' appeal. Pursuant to Articles 41 § 2 (4) and 184 § 1 of the CCP, the courts, based on the materials of a case examined by them, were entitled to request that the prosecutor adopt a decision instituting criminal proceedings against third persons. Since the case was currently pending before the Court of Appeal, the applicants' appeal was to be dismissed.

114. On 28 March 2006 the applicants lodged an appeal on points of law, raising similar arguments. They also claimed that their procedural rights had been violated since the authorities refused to comply with the requirements of Articles 180 and 181 of the CCP.

115. On 30 May 2006 the Criminal and Military Court of Appeal issued its judgment on the merits of the applicants' criminal case. It found the applicants guilty and increased their sentences to life imprisonment. The Court of Appeal relied, *inter alia*, on the second applicant's confession statement. As regards the applicants' allegations of ill-treatment, the Court of Appeal found them to be unsubstantiated. In doing so, the Court of Appeal first of all referred to the submissions made before the Regional Court by law enforcement officers A.H., S.T., V.K. A.B. and A.K., Chiefs of the Third and Fourth Battalions E.M. and I.V., officer M.A. and cameraman A.G. The Court of Appeal further referred to the video recording of the reconstruction of the crime, which did not reveal any bodily injuries on the second applicant, who moved and talked freely, and the records of examination of a person's body drawn up at the military police arrest facility on 24 April 2004.

116. On 1 June 2006 the Court of Cassation decided to leave the appeal of 28 March 2006 unexamined. It found, in particular, that the applicants had brought a complaint under Article 290 of the CCP against the prosecutor's actions related to the pre-trial proceedings. However, since the Court of Cassation was the supreme judicial instance and was called upon, pursuant to Article 92 of the Constitution, to ensure the uniform application of the law, its constitutional status prevented it from examining appeals against decisions and actions of the prosecutor related to the pre-trial proceedings. Such appeals might be examined by the Court of Cassation in exceptional circumstances, if they raised an issue of high importance for judicial practice. In such circumstances, the appeal was to be left unexamined since it was brought against a decision which was not subject to appeal in cassation.

3. The cassation proceedings

117. On 9 June 2006 the applicants lodged an appeal on points of law against the judgment of the Criminal and Military Court of Appeal of 30 May 2006.

118. On an unspecified date, the father of one of the murdered servicemen, in his capacity of victim, also lodged an appeal on points of law against that judgment. In his appeal he complained that the criminal case had been conducted with procedural violations, as a result of which three innocent servicemen had been found guilty, while the real perpetrators were never brought to justice.

119. On 7 August 2006 the Court of Cassation returned the applicants' appeal, requesting them to correct a shortcoming and to re-submit the appeal in accordance with the newly-adopted amendments to the CCP.

120. On 11 September 2006 the first and second applicants re-submitted their appeals, seeking to have their conviction quashed and to be acquitted. It appears that on an unspecified date the third applicant also followed suit. The applicants complained in detail that they had been unlawfully deprived of their liberty from 19 to 24 April 2004 and subjected to ill-treatment during that period. They further complained that the authorities had failed to investigate their allegations of ill-treatment.

121. On 9 October 2006 the Court of Cassation decided to admit the applicants' appeals for examination. On an unspecified date the victim's appeal was also admitted for examination.

122. On 22 December 2006 the Court of Cassation decided to dismiss the applicants' appeals, but to grant that of the victim, quashing the judgments of 18 May 2005 and 30 May 2006 and remitting the case for further investigation. The Court of Cassation found that the investigating authority had failed to take all the necessary measures for an objective evaluation of the circumstances of the case and had failed to verify duly the statements of the defence concerning the applicants' innocence and the existence of exonerating evidence, as well as their allegations of a violation of lawfulness in the course of the proceedings. In such circumstances, the applicants' appeals seeking an acquittal could not be granted, since it was necessary to carry out a further investigation into the case.

123. As regards, in particular, the second applicant's confession statement, the Court of Cassation found that this statement was not supported by other objective evidence in the case. Furthermore, the second applicant had retracted his statement, alleging that he had given it as a result of fear, violence and torture. It was therefore necessary to verify the credibility of the second applicant's confession statement.

124. As regards the question of the applicants' deprivation of liberty and their allegations of ill-treatment, the Court of Cassation stated:

> "It follows from the materials of the case that [the applicants] were detained on 24 April 2004. It was indicated in the appeals on points of law that for five days in a row [the applicants], having the status of a witness, had been subjected to violence, torture and inhuman treatment, as a result of which a confession statement was extorted from [the second applicant].

Pursuant to Paragraph 5 of Order no. 112 of 21 April 2004 of the commander of military unit no. 33651, [the third applicant] was 'considered to be isolated' by the Stepanakert Military Police Department and was deprived of his daily allowance on the basis of Isolation Notice N-99.

Pursuant to Paragraph 6 of the same Order, [the second and first applicants], who were on military watch, were considered to be 'isolated by the Stepanakert Military Police Department' and were deprived of their daily allowances on the basis of Isolation Notices N-100 and N-101.

In the course of the further investigation it is necessary to clarify what it means 'to consider' the said soldiers 'to be isolated by the Stepanakert Military Police Department' on the basis of isolation notices and what is the substance of such isolation. Has it not led to unlawful restrictions and deprivation of liberty not inherent in measures normally applied in the armed forces?

It is also necessary to verify in detail the arguments raised in the appeals lodged by the defence concerning the infliction of violence on [the applicants] and subjecting them to torture during those days."

125. The Court of Cassation also decided to annul the preventive measure and to release the applicants from detention.

G. Further investigation

126. On 6 February 2007 the investigation into the applicants' criminal case was assigned to another investigator of the Military Prosecutor's Office, V.S. An investigator of the Gugark Garrison Military Prosecutor's Office of Armenia, S.G., was appointed as his assistant.

127. On 19 February 2007 the applicants appeared for questioning in their capacity of accused but refused to testify, stating that they considered themselves to be victims rather than accused. They stated that they would be willing to testify in connection with their allegations of torture if a separate criminal case was instituted and they were recognised as victims.

128. On the same date lawyer Z.P., who at that point was representing all three applicants, challenged the impartiality of employees of the Military Prosecutor's Office, alleging that they were incapable of carrying out an objective investigation, which was evidenced by all the unlawfulness demonstrated earlier in the case, and requesting that they be removed from the investigation. This challenge was dismissed by the Acting Prosecutor General as unfounded.

129. On 27 February 2007 lawyer Z.P. filed a motion with the General Prosecutor's Office requesting that a separate criminal case be instituted. She argued that the criminal case in question had been instituted on account of murder and the applicants were involved as accused. It was not possible to carry out an investigation into allegations of torture within the scope of that criminal case. The applicants had consistently complained for three years about the torture that they had undergone, and indicated the names of

the perpetrators, but the authorities refused to make a proper assessment of their allegations.

130. On 28 February 2007 investigator V.S. rejected the motion, finding that not every report of a crime was sufficient in itself to institute criminal proceedings. Sufficient materials had not yet been obtained to adopt such a decision.

131. In March and April 2007 the investigators questioned a number of persons, including investigators A.H. and S.T. and military police officers V.K., A.B. and M., the commander of the applicants' military unit, M.A., three military police officers of the Stepanakert Military Police Department and one officer of the Nagorno Karabakh Defence Army who had transported the applicants from Stepanakert to Yerevan, lawyers M.A. and V.Y., and the third applicant's cousin's husband, H.M., who had visited him in detention together with his father on 26 April 2004.

132. Investigators A.H. and S.T. provided their account of the events and denied having ill-treated the applicants. The transcripts of their interviews, including the questions and answers, contained texts which were word-for-word duplicates. Military police officers V.K. and A.B. similarly denied having ill-treated the applicants. Military police officer M. stated that he had been absent from the Stepanakert Military Police Department during the period when the applicants were taken there and he had never encountered them. Commander of the military unit M.A. stated that on 21 April 2004 he had imposed disciplinary detention on the applicants because of their unauthorised absence from the unit and ordered that they serve it at the Stepanakert Military Police Department. He did not know what questions had been posed to the applicants by the investigators in his office because this had been done in private. No violence had been inflicted in his presence. The officers who had transported the applicants stated that the applicants had not been handcuffed and no violence had been inflicted on them during their transfer. They had not noticed any bodily injuries and the applicants had not complained about their health.

133. Lawyers M.A. and V.Y. stated that on 24 April 2004 they had received telephone calls from investigator A.H. who had invited them to the Military Prosecutor's Office to take up the applicants' defence, since a lawyer's participation was mandatory in cases involving servicemen. They were presented to the second applicant, who was asked to choose between them, so he chose lawyer M.A. Lawyer M.A. stated that, from that moment, he participated in all the interviews and confrontations involving the second applicant. On 27 April 2004 he met with his parents and signed a contract. Lawyer V.Y. stated that he had represented the first and third applicants until 26 April 2004. On that day he met with the first and third applicants' parents, who did not wish him to continue representing them. Both lawyers stated that they had not noticed any injuries on the applicants, no ill-treatment had been inflicted on the applicants in their presence, no

complaints of ill-treatment had been made by the applicants nor any pressure exerted on them by the investigator. Lawyer M.A. added that the second applicant did not raise his allegations of ill-treatment until 15 days later when they met in private at the military police arrest facility. He then advised the second applicant to lodge a complaint with the Military Prosecutor.

134. H.M. stated that on 24 April 2004 the third applicant's father had told him that his son had been taken to the Military Prosecutor's Office. Since he was acquainted with investigator A.H., who lived in his neighbourhood, he promised to find out the reasons for the third applicant's arrest. On the next day he had bumped into A.H. in the yard and introduced him to the third applicant's father. They inquired about the reasons for his arrest, to which A.H. had replied that he was investigating a murder case and the third applicant had been arrested in that connection. They had further asked A.H. to give them a possibility to visit the third applicant for a few minutes, to which A.H. replied that on the following day he was going to carry out some investigative measures involving the third applicant at the Military Prosecutor's Office and he could allow them to see him for a few minutes. On the following day they had gone to the Military Prosecutor's Office and met with the third applicant for a few minutes in A.H.'s office. In reply to the investigator's question as to whether he had seen any injuries on the third applicant or received from him any complaints of ill-treatment, H.M. stated that he had not noticed any injuries or received such complaints. Furthermore, since the investigator had left them alone for a few minutes, the third applicant, in his opinion, would at least have told his father about any ill-treatment.

135. On 2 April 2007 the investigator decided to order a forensic medical examination in respect of the applicants. The experts were requested to answer the following questions: (a) whether there had been or were any injuries on the applicants' bodies and, if so, what was their origin; (b) if so, whether they could have originated during the period from 19 to 24 April 2004 and not be visible three days later, namely on 27 April 2004; and (c) whether the applicants suffered from any illness and, if so, whether it had been caused by the alleged ill-treatment.

136. On 10 September 2007 the forensic medical experts produced their conclusions. They found that, according to the applicants' medical files, they did not have any injuries or suffer from any illnesses at the material time. It was not possible to determine whether the applicants had any injuries or illnesses at present since they had failed to appear for the examination. The experts added that skin, bone and joint injuries, such as wounds, bruises, scratches, fractures and dislocated joints, were usually visible after three days.

137. On 1 October 2007 the Acting General Prosecutor decided not to institute criminal proceedings against the alleged perpetrators of

ill-treatment for lack of a criminal act. This decision referred at the outset to the instructions of the Court of Cassation to investigate the circumstances of the applicants' alleged deprivation of liberty prior to 24 April 2004 and their ill-treatment. As regards the deprivation of liberty, it was found to have been a lawful disciplinary measure imposed by the commander of the military unit within the scope of authority vested in him. It was further found that the investigating team had the right to interview the applicants as witnesses and they had been transferred for that purpose. At the Stepanakert Police Department they were placed in a disciplinary isolation cell and continued to be questioned, but later it was necessary to transfer them to Yerevan for the purposes of the investigation. There the second applicant had made his confession, after which the applicants were arrested. Lawyers were assigned to them and they were detained by a court decision of 27 April 2004. In such circumstances, the applicants' allegations of unlawful deprivation of liberty and ill-treatment had been rebutted by the evidence collected in the case.

138. On 25 October 2007 the applicants lodged an appeal against this decision. They complained in detail that they had been unlawfully deprived of their liberty from 19 to 24 April 2004 in the guise of witnesses, while already being suspected of the crime. This had been done in order to deprive them of the safeguards enjoyed by a suspect under the law, such as the right to have a lawyer and the right not to testify, and to coerce them into making a confession. They had never been summoned to appear as witnesses as required by law but instead were forcibly taken from their military unit and transported miles away from one law enforcement agency to another where they were kept in various rooms and cells and subjected to repeated ill-treatment. There had been no reasonable suspicion to justify depriving them of their liberty and they had been arrested only once the confession had been secured through coercion. They had then been placed in the military police arrest facility where the investigators continued exerting pressure, and in order to hide any traces of ill-treatment. They had not been informed about the reasons for their deprivation of liberty and were brought before a judge with a delay of eight days. The decision of the Acting General Prosecutor had been unlawful and unfounded. He was obliged by law to institute a separate set of criminal proceedings on account of ill-treatment, to recognise them as victims and, after carrying out an investigation, to give a proper assessment to the questions raised by the Court of Cassation in its decision of 22 December 2006. For more than four years they had consistently raised their allegations of ill-treatment and indicated the names of the perpetrators but no effective investigation had ever been carried out. The applicants relied, *inter alia*, on Articles 3 and 5 of the Convention.

139. On 23 November 2007 the Kentron and Nork-Marash District Court of Yerevan decided to dismiss the appeal. The decision reads as follows:

> "Having studied the appeal and the materials of the criminal case, the court finds that the contested actions were taken in compliance with the law and there has been no violation of a person's rights or freedoms."

140. No appeal was lodged against this decision.

141. On 18 January 2008 the Military Prosecutor decided to institute criminal proceedings to investigate whether the fact that the starting date of the first applicant's detention was indicated in his medical file as "19 April 2004" amounted to falsification of an official document. A number of persons were questioned and it was revealed that the note in question had been made by mistake by the head of the medical service based on the first applicant's oral statement. For this reason it was decided to terminate the criminal proceedings for lack of a criminal act.

142. On an unspecified date the applicants' trial resumed in the Shirak Regional Court. According to the applicants, a number of former servicemen of their military unit and also a few civilians testified during the trial that they had been locked up during various periods at the beginning of 2004 at the Martakert Garrison Military Prosecutor's Office and the Stepanakert Military Police Department and questioned in connection with the murders. Many of them stated that they had been humiliated and brutally ill-treated during those periods in order to confess to the crime.

143. On 18 December 2012 the Shirak Regional Court, having heard numerous witnesses and examined the available evidence, found that the applicants' guilt had not been substantiated and decided to acquit them. It appears that no appeals were lodged against this judgment.

II. RELEVANT DOMESTIC LAW

A. The Constitution

144. Article 18 provided at the material time that everyone had the right to liberty and security of person. A person might be arrested or subjected to a personal search only in accordance with a procedure prescribed by law. A person might be detained only by a court decision in accordance with a procedure prescribed by law.

145. Article 19 provided that no one should be subjected to torture, cruel or degrading treatment and punishment.

146. Article 42 provided that no one was obliged to testify against himself, his spouse and his close family members.

147. On 27 November 2005, amendments to the Armenian Constitution were adopted which entered into force on 6 December 2005. As a result of

those amendments the Court of Cassation was entrusted under Article 92 with a new role, namely to ensure the uniform application of the law.

B. The Code of Criminal Procedure (as in force at the material time)

1. Institution of criminal proceedings

148. Article 175 provides that the prosecutor, the investigator or the body of inquiry are obliged, within the scope of their jurisdiction, to institute criminal proceedings if there are reasons and grounds envisaged by the Code.

149. Article 176 provides that reasons for instituting criminal proceedings include: (1) information about crimes addressed to the body of inquiry, the investigator or the prosecutor by individuals and legal entities; (2) information about crimes in the mass media; and (3) discovery of data relating to a crime or material traces and consequences of a crime by the body of inquiry, the investigator, the prosecutor, the court or the judge while performing their functions.

150. Article 177 provides that information about crimes received from individuals can be provided orally or in writing. An oral statement about a crime made during an investigative measure or court proceedings shall be entered into the record of the investigative measure or of the court hearing.

151. Article 180 provides that information about crimes must be examined and decided upon immediately, or in cases where it is necessary to check whether there are lawful and sufficient grounds to institute proceedings, within ten days following the receipt of such information. Within this period, additional documents, explanations or other materials may be requested, the scene of the incident inspected and examinations ordered.

152. Article 181 provides that one of the following decisions must be taken in each case when information about a crime is received: (1) to institute criminal proceedings, (2) to reject the institution of criminal proceedings, or (3) to hand over the information to the authority competent to deal with it.

153. Article 184 § 1 provides that the body of inquiry, the investigator or the prosecutor, based on the materials of a criminal case dealt with by them, shall adopt a decision to institute a new and separate set of criminal proceedings, while the court shall request the prosecutor 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.

154. Article 185 §§ 1, 2, 3 and 5 provides that, in the absence of lawful reasons and grounds for institution of criminal proceedings, the prosecutor, the investigator or the body of inquiry shall adopt a decision to reject the

institution of criminal proceedings. A copy of the decision shall be served on the individual who has reported the crime. This decision may be contested before a higher prosecutor or the court of appeal. The court of appeal shall either quash the decision or uphold it. If the decision is quashed, the prosecutor shall be obliged to institute criminal proceedings.

2. Arrest

155. Article 128 § 1 provides that arrest is the act of taking a person into custody, bringing him before the investigating authority or the authority dealing with the criminal case, drawing up a relevant record and informing him about it, with the aim of keeping that person in short-term custody in places and conditions defined by the law.

156. Article 129 § 2 provides that the period of arrest of a person suspected of having committed an offence cannot exceed 72 hours from the moment of taking him into custody.

157. Article 130 provides that, if it appears from the evidence obtained in the case that a person has committed an offence, and if he is located elsewhere or his location is unknown, the investigating authority is entitled to decide to arrest him.

158. Article 132 provides that an arrested person must be released upon the decision of the authority dealing with the case if, *inter alia*, the suspicion of having committed an offence has not been confirmed or the maximum time limit for an arrest prescribed by the Code has expired and the court has not adopted a decision to detain the accused.

3. Detention

159. Article 134 provides that preventive measures are measures of compulsion imposed on the suspect or the accused in order to prevent their inappropriate behaviour in the course of the criminal proceedings and to ensure the enforcement of the judgment. Preventive measures include, *inter alia*, detention which can be applied only in respect of the accused.

160. Article 136 provides that detention is imposed only by a court decision upon the investigator's or the prosecutor's motion or, during the trial proceedings, of the court's own motion.

161. Article 137 provides that detention is the placement of a person in places and conditions prescribed by law. A detainee cannot be kept for more than three days in a facility for holding arrestees. The court's decision imposing detention can be contested before a higher court.

162. Article 138 § 3 provides that during the pre-trial proceedings of a criminal case the detention period may not exceed two months, except for cases prescribed by the Code. The running of the detention period shall be suspended on the date when the prosecutor transmits the criminal case to the

court or the accused or his lawyer are familiarising themselves with the case file.

163. Article 139 §§ 1 and 3 provides that, if it is necessary to extend the accused's detention period, the investigator or the prosecutor must submit a well-grounded motion to the court not later than ten days before the expiry of the detention period. When deciding on the extension of the accused's detention period, the court shall extend the detention period within the limits prescribed by the Code, on each occasion for a period not exceeding two months.

164. Article 141 (10) provides that the administration of a detention facility is obliged, *inter alia*, immediately to release a person kept in detention without a relevant court decision or if the detention period imposed by a court decision has expired.

165. Article 277 provides that, having approved the bill of indictment, the prosecutor shall transmit the case to the competent court.

166. Article 291 provides that a criminal case received at the court shall be taken over by the judges in accordance with the prescribed procedure and a relevant decision shall be adopted.

167. Article 292 provides that the judge who has taken over a case shall examine the materials of the case and within fifteen days from the date of taking over the case shall adopt, *inter alia*, a decision setting the case down for trial.

168. Article 293 § 2 provides that the decision setting the case down for trial shall contain, *inter alia*, a decision cancelling or modifying the preventive measure or imposing such measure.

4. Witnesses

169. Article 86 §§ 1 and 3 (1) provides that a witness is a person who has been called to testify by a party or the authority dealing with the criminal case and who may be aware of any circumstance related to the case which needs to be clarified. A witness is obliged to appear upon the summons of the authority dealing with the criminal case in order to testify or to participate in the investigative and other procedural measures.

170. Article 205 §§ 1 and 2 provides that a witness is called by a summons which is served on him upon his signature. A witness may also be called by means of a telegram, telephone message or fax. The summons shall indicate the summoning authority, the person being summoned, in which procedural capacity, and where and when (the date and hour of appearance) the person called should appear.

171. Article 206 §§ 1 and 2 provides that a witness can be questioned about any important circumstance related to the case, including the suspect, the accused, the victim and other witnesses. A witness shall be questioned at the location where the investigation is being carried out or, if necessary, where he is located.

5. Other relevant provisions

172. Article 11 § 7 provides that in the course of criminal proceedings no one shall be subjected to torture and to unlawful physical or mental violence, including such treatment inflicted through the administration of medication, hunger, exhaustion, hypnosis, denial of medical assistance and other cruel treatment. It is prohibited to coerce testimony from a suspect, accused, defendant, victim, witness and other parties to the proceedings by means of violence, threat, trickery, violation of their rights, and through other unlawful actions.

173. Article 17 § 4 provides that complaints alleging a violation of lawfulness in the course of criminal proceedings must be thoroughly examined by the authority dealing with the case.

174. Article 41 § 2 (4) provides that the court is entitled to request the prosecutor to institute criminal proceedings in cases prescribed by the Code.

175. Article 65 § 2 (20) provides that the accused is entitled, in accordance with a procedure prescribed by the Code, to contest the actions and decisions of the body of inquiry, the investigator, the prosecutor and the court, including the verdict and other final court decisions.

176. Article 98 provides that any person participating in the criminal proceedings, who may be able to provide information important for the disclosure of the crime and identification of the perpetrator, as a result of which his life, health, property or rights and lawful interests, or those of his family members, close relatives or other close persons may be endangered, is entitled to protection. The protection shall be provided by the authority dealing with the case. The authority dealing with the case, having discovered that a person needs protection, on the basis of that person's written application or of its own motion shall adopt a decision to take a protection measure which is subject to immediate implementation. Article 98.1 lists, among others, changing the place of service as a protection measure.

177. Article 105 § 1 (1) provides that materials obtained by violence, threat, trickery, humiliation of a person, and through other unlawful actions cannot constitute the basis for charges or be used as evidence in criminal proceedings.

178. Article 243 provides that examinations shall be carried out upon the decision of the body of preliminary inquiry, the investigator or the prosecutor, when special knowledge in the sphere of science, technology, arts or crafts is necessary in order to establish circumstances important for the case.

179. Article 290 § 1 provides that the suspect, the accused, the defence lawyer, the victim, the 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 of the body of preliminary inquiry, the investigator,

the prosecutor or the bodies carrying out operative and intelligence measures, which are prescribed by the Code, if their complaint has not been granted by a prosecutor. Article 290 § 2 provides that the same persons are entitled to contest before a court the refusal of the body of preliminary inquiry, the investigator or the prosecutor to receive information about crimes or to institute criminal proceedings, in cases prescribed by the Code. Article 290 § 5 provides that, if the complaint is found to be substantiated, the court shall adopt a decision obliging the authority carrying out the criminal proceedings to put an end to the violation of a person's rights or freedoms. If the contested actions are found to be lawful and no violation of a person's rights or freedoms is found, the court shall adopt a decision dismissing the complaint.

C. The Law on Conditions for Holding Arrestees and Detainees (in force as of 1 April 2002)

180. Section 3 prescribes that a record of arrest drawn up in accordance with the CCP or an arrest warrant issued by the investigating authority shall serve as a ground for holding a person in an arrest facility. The court decision imposing detention, adopted in accordance with the CCP, shall serve as a ground for holding a person in a detention facility.

181. Section 4 prescribes that arrest facilities and detention facilities operate under the authority of the competent public authorities.

182. Section 21 prescribes that, if bodily injuries are detected on an arrestee or a detainee, the medical staff of the relevant facility shall immediately carry out a medical examination. The results of the examination shall be recorded in the personal file, in accordance with the prescribed procedure, and communicated to the injured person and the investigating authority.

183. Section 29 prescribes that the administration of the relevant facility shall admit an arrestee to an arrest facility and a detainee to a detention facility in accordance with the procedure prescribed by the internal regulations. A person transferred to a detention facility shall be placed in the quarantine unit for a period of seven days in order to undergo a medical examination and to be familiarised with the rules of the detention facility.

D. Disciplinary Regulations of the Armed Forces of Armenia, approved by Government Decree no. 247 of 12 August 1996 *(ՀՀ կառավարության 1996թ. օգոստոսի 12-ի թիվ 247 որոշմամբ հաստատված ՀՀ զինված ուժերի կարգապահական կանոնադրություն)*

184. Paragraph 51 provides that a serviceman may be personally subjected to disciplinary penalties by his commander for a violation of military discipline or public order.

185. Paragraph 54 lists isolation and placement in a disciplinary isolation cell of conscripted soldiers for up to ten days as one such penalty.

186. According to Paragraph 106, placement in a disciplinary isolation cell is one of the extreme measures of compulsion and shall be applied in case of grave disciplinary offences or when all other measures taken by the commander (chief) are in vain. The list of grave disciplinary offences and the procedure for placement of servicemen in a disciplinary isolation cell is contained in paragraphs 1 to 6 of Annex 5 to these Regulations.

187. Paragraph 1 of Annex 5 lists unauthorised absence as a grave disciplinary offence.

188. According to Paragraph 2 of Annex 5, the execution of the penalty of isolation and placement in a disciplinary isolation cell of soldiers shall be assigned to the senior member of the company (staff).

189. According to Paragraph 7 of Annex 5, the procedure for transferring isolated persons to the disciplinary isolation cell, their delivery, admission and holding in the disciplinary isolation cell and their release therefrom shall be prescribed by the Regulations for the Garrison and Sentry Services.

E. Regulations for the Garrison and Sentry Services in the Armed Forces of Armenia, approved by a law adopted on 3 December 1996 *(ՀՀ զինված ուժերի կայազորային ու պահակային ծառայությունների կանոնագիրք)*

190. The relevant provisions of Annex 14, prior to the amendments adopted on 28 April 2004 which entered into force on 12 June 2004, were as follows.

191. Paragraph 1 provided that special premises – a disciplinary isolation cell – should be created for the purpose of isolation of servicemen as a disciplinary penalty, which could be located at garrisons or military units.

192. Paragraph 2 provided that, besides servicemen isolated for disciplinary reasons, servicemen arrested in accordance with a procedure prescribed by law could also be kept in the disciplinary isolation cell.

193. Following the introduction of the above-mentioned amendments, paragraphs 1 and 2 provide that both arrested and detained servicemen can be kept at the garrison disciplinary isolation cell but for a period not exceeding 72 hours.

194. Paragraph 6 provided that persons isolated for disciplinary reasons should be transferred to the disciplinary isolation cell on the basis of an isolation notice.

195. Paragraph 12 provided that admission to the garrison isolation cell should be performed by the chief of the disciplinary isolation cell or, in his absence, by the chief of sentry, while admission to the military unit isolation cell should be performed by the officer on duty of the military unit.

196. Paragraph 13 provided that the chief of the isolation cell or the officer on duty of the military unit, when admitting soldiers, should verify whether they have any items in their possession, carry out a personal inspection, take away belt buckles and other items or valuables, which are not allowed in a cell, as well as official documents, to keep them in storage, and enter all the information contained in the isolation notice into the register and the name record of isolated persons. Paragraph 13 further contained prototype forms of such documents as the name record of isolated persons, the register of persons kept in the disciplinary isolation cell and the receipt on admission of isolated persons.

197. The name record of isolated persons included such sections as the rank and name of the isolated person, the cell where he was to be kept, the time of isolation and release and the signature of the chief of the disciplinary isolation cell or the watchman of the military unit.

198. The register of persons kept in the disciplinary isolation cell included such sections as the rank and name of the isolated person, the name or number of the military unit, by whom he was isolated and on what ground, the duration of the isolation, the cell where he was to be kept, the time of isolation and release and a signature certifying the receipt of belongings, documents and money confiscated at the time of isolation.

199. The receipt on admission of isolated persons included such sections as the rank and name of the isolated person, his signature, the time of his admission, the duration of his stay and the signature of the chief of the disciplinary isolation cell or the watchman of the military unit.

F. Government Decree no. 1015 of 19 October 2001 on the Creation of a Penitentiary Service Within the Ministry of Justice of Armenia *(ՀՀ կառավարության 2001 թ. հոկտեմբերի 19-ի թիվ 1015 որոշում ՀՀ արդարադատության նախարարության համակարգում քրեակատարողական ծառայություն ստեղծելու մասին)*

200. According to this Decree, a Penitentiary Service was created within the Ministry of Justice which took over the administration of all the penitentiary institutions (pre-trial detention and correctional facilities) previously administered by the Ministry of the Interior. The Decree included a list of all such facilities, which did not include military unit no. 10724.

G. The Law on the Penitentiary Service (in force from 25 December 2003 until 27 August 2005)

201. Section 2 prescribed that the Penitentiary Service operated within the Ministry of Justice.

202. Section 5 prescribed that one of the main objectives of the Penitentiary Service was to keep persons in detention on grounds and in accordance with a procedure prescribed by law.

203. Section 6 prescribed that the central authority of the Penitentiary Service was the Penitentiary Department of the Ministry of Justice which administered and supervised the penitentiary institutions.

204. Section 8 prescribed that penitentiary institutions included pre-trial detention and correctional facilities.

H. The Constitutional Court's decision of 7 December 2009

205. In an unrelated case, the Constitutional Court examined the question of the constitutionality of Article 290 of the CCP. The Constitutional Court found, *inter alia*, that the wording of that provision lacked certainty as regards the possibility of contesting before the courts the "inaction" of a public authority as opposed to its "decisions and actions" and that such possibility had developed only through domestic practice. The Constitutional Court concluded that the requirement imposed by that provision on the complainant to apply first to the prosecutor, and have his complaints rejected before seizing the courts, placed unreasonable limitations on the complainant's access to court and was therefore unconstitutional.

III. OTHER RELEVANT MATERIALS

A. Armenia's reservation in respect of Article 5 of the Convention

206. When depositing the instrument of ratification of the Convention, the Armenian Government made the following reservation:

> "In accordance with Article 57 of the Convention (as amended by Protocol No. 11) the Republic of Armenia makes the following reservation: The provisions of Article 5 shall not affect the operation of the Disciplinary Regulations of the Armed Forces of the Republic of Armenia approved by Decree No. 247 of 12 August 1996 of the Government of the Republic of Armenia, under which [isolation and placement in a disciplinary isolation cell] as disciplinary penalties may be imposed on soldiers, sergeants, ensigns and officers."

207. Attached to the reservation were a number of extracts from the Disciplinary Regulations in question, including paragraphs 51 and 54.

B. Agreement on Military Cooperation between the Government of Armenia and the Government of the Nagorno Karabakh Republic (signed on 25 June 1994)

208. According to Article 4, the parties agreed that, within the framework of the present Agreement, citizens of Armenia and the Nagorno Karabakh Republic liable for call-up are entitled to perform regular military service, upon their consent, in either the Nagorno Karabakh Republic or Armenia. Having performed regular military service in either of the two states, a person is considered exempt from performing regular military service in the country of his nationality.

209. According to Article 5, if a military crime is committed by Armenian nationals performing regular military service in the Nagorno Karabakh Republic, the criminal proceedings and the trial in their respect shall be conducted on the territory of Armenia by the Armenian authorities, in accordance with a procedure prescribed by the Armenian law.

THE LAW

I. THE COURT'S JURISDICTION

A. The parties' submissions

210. The Government, in respect of the Court's jurisdiction over the alleged events which took place in Nagorno Karabakh prior to the applicants' transfer on 23 April 2004 to Yerevan, made a reference to

Articles 4 and 5 of the Agreement on Military Cooperation between the Governments of Armenia and the Nagorno Karabakh Republic (see paragraphs 208 and 209 above).

211. The applicants claimed that the Government's reference to the above Agreement suggested that they accepted the jurisdiction of the Armenian authorities over the events in question.

B. The Court's assessment

212. Article 1 of the Convention reads as follows:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

213. The Court has to examine whether the complaints concerning the alleged events which took place prior to the applicants' transfer to Yerevan on 23 April 2004 can be considered to fall under the jurisdiction of the respondent Government and hence engage its responsibility under the Convention, given that such events took place outside the territory of Armenia, namely in the unrecognised Nagorno Karabakh Republic.

214. The Court notes that it has already examined in another case the issue of Armenia's jurisdiction over the territory in question and found – with reference, *inter alia*, to the facts of the present case – that Armenia exercised effective control over Nagorno Karabakh and the surrounding territories and, consequently, the matters complained of, which had happened in that area, came within the jurisdiction of Armenia for the purposes of Article 1 of the Convention (see *Chiragov and Others*, cited above, §§ 169-186).

215. It follows that Armenia has jurisdiction under the Convention over the events which happened in those territories and the acts committed by either the Armenian or Karabakh authorities.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

216. The applicants complained that they had been subjected to torture while in custody from 19 to 23 April 2004 and that there had been no effective investigation into their allegations of ill-treatment. The first applicant also complained that he had not been provided with requisite medical assistance and allowed to meet his family during his hunger strike. The applicants 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."

A. The alleged ill-treatment and lack of effective investigation

1. Admissibility

(a) The parties' submissions

(i) The Government

217. The Government raised three objections concerning the admissibility of the applicants' complaints.

218. Firstly, the Government submitted that the first applicant had failed to exhaust the domestic remedies in respect of his complaint concerning the alleged lack of an effective investigation. In particular, he was entitled under Article 65 § 2 (20) of the CCP to contest the actions of the investigating authority refusing to institute criminal proceedings. However, he failed to contest the Military Prosecutor's decision of 18 June 2004 and the General Prosecutor's decision of 16 July 2004 before the courts.

219. Secondly, the Government submitted that the second and third applicants had failed to comply with the six-month rule. In particular, their complaints of ill-treatment had been rejected by the Kentron and Nork-Marash District Court of Yerevan and the Criminal and Military Court of Appeal on 1 February and 14 March 2006 respectively. The decision of the Court of Appeal had been final and not subject to appeal. The applicants, however, had lodged an appeal on points of law on 28 March 2006 which had been left unexamined by the Court of Cassation on 1 June 2006. Even assuming that the applicants had been unaware that the decision of 14 March 2006 had not been subject to appeal, this should have become clear to them after their appeal on points of law had been left unexamined by the decision of 1 June 2006. Nevertheless, they had failed to apply to the Court within six months from 14 March 2006 and had done so only on 9 November 2006.

220. Thirdly, the Government claimed that all three applicants had failed to exhaust the domestic remedies by not lodging an appeal against the decision of the Kentron and Nork-Marash District Court of Yerevan of 23 November 2007.

(ii) The applicants

221. The applicants submitted the following arguments in reply.

222. Firstly, the first applicant argued that the law did not provide for a possibility of challenging the decisions mentioned by the Government before the courts.

223. Secondly, the second and third applicants argued that the final decision in the proceedings referred to by the Government was the decision of the Court of Cassation of 1 June 2006, taken upon their appeal against the decision of 14 March 2006, and they had therefore complied with the

six-month rule by lodging their application on 9 November 2006. They further alleged that, even if the Court of Cassation left their appeal unexamined for lack of competence, this was done on the basis of legal rules which lacked clarity.

224. The applicants did not comment on the third objection raised by the Government.

(b) The Court's assessment

(i) General principles

225. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities *Aksoy v. Turkey*, 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-71, 25 March 2014).

226. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Vučković and Others*, cited above, § 77).

227. The Court further reiterates that, as a rule, the six-month period runs from the final decision in the process of exhaustion of domestic remedies (see, among other authorities, *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 259, ECHR 2014 (extracts)).

(ii) Application of the above principles in the present case

228. The applicants alleged that they had been subjected to ill-treatment between 19 April and 23 April 2004. The Court notes that, at the material time, the most appropriate avenue of exhaustion for individuals to follow in cases of alleged ill-treatment was to inform any of the competent authorities listed in Article 175 of the CCP about the fact of ill-treatment, according to the procedure envisaged under Article 177 of the CCP (see paragraphs 148 and 150 above). The relevant authority was obliged, under Article 181 of the CCP, to take a decision in each such case either to institute criminal proceedings or to reject the institution of such proceedings (see paragraph 152 above). A decision rejecting the institution of criminal proceedings could then be contested before the courts under Article 185 of the CCP (see paragraph 154 above).

229. In the present case, on 11 May 2004 the second applicant retracted his confession as having been made as a result of threats. While this initial complaint did not specifically allege any ill-treatment, on 25 May 2004 the first applicant lodged a detailed complaint within the meaning of Article 177 of the CCP with, *inter alia*, the General Prosecutor and the Military Prosecutor, alleging that he and the other two applicants had been ill-treated, providing relevant details, including the names of the alleged perpetrators, and requesting that an investigation be carried out (see paragraph 43 above). On 8 June 2004 his lawyer, Z.P., lodged another complaint, similarly alleging ill-treatment in respect of all three applicants (see paragraph 44 above). The second and third applicants raised further allegations of ill-treatment on 10 and 16 June 2004 (see paragraphs 46 and 49 above).

230. The Court notes that no decision was taken by the authorities on the above complaints, either to institute criminal proceedings or to reject the institution of such proceedings, despite the explicit requirement of Article 181 of the CCP. There was no response whatsoever to the second and third applicants' allegations, while the first applicant's and his lawyer's complaints were dealt with by the Military Prosecutor, who chose to dismiss them by a letter of 10 June 2004 without explicitly rejecting the request to institute criminal proceedings (see paragraph 45 above). Thus, in the absence of a formal decision under Article 181 of the CCP, the applicants were precluded from effectively contesting the Military Prosecutor's "dismissal" of their complaints before the courts under Article 185 of the CCP.

231. It is not entirely clear whether the applicants had any effective and accessible remedy against the Military Prosecutor's failure to take any decision regarding their allegations of ill-treatment. It appears that they may have had a possibility to contest the inaction of the Military Prosecutor under Article 290 of the CCP (see paragraph 179 above). This provision, however, was found to be unconstitutional by the Constitutional Court's

decision of 7 December 2009. In doing so, the Constitutional Court found that the wording of that provision lacked certainty as regards the possibility of contesting before the courts the "inaction" of a public authority as opposed to its "decisions and actions", and that such a possibility had developed only through domestic practice, without specifying, however, when exactly such a practice had developed and how well-established it was. Furthermore, the Constitutional Court found that that provision placed unreasonable limitations on the complainant's access to court since it stipulated as a pre-condition for seizing the courts the requirement of first applying to the prosecutor and having one's complaints rejected by him (see paragraph 205 above). It therefore appears that the remedy prescribed by Article 290 of the CCP was at the material time not sufficiently clear and accessible.

232. The Court notes that, in any event, the applicants did not pursue that remedy at the material time and the Government did not suggest that they have thereby failed to exhaust the domestic remedies. Nor did the Government suggest any other procedure which the applicants could have pursued before the courts in cases where the relevant authority failed to take any decision or, as in the first applicant's case, dismissed allegations of ill-treatment in a letter rather than a decision. As regards specifically the decisions referred to by the Government, namely the Military Prosecutor's decision of 18 June 2004 and the General Prosecutor's decision of 16 July 2004, the Court notes that, firstly, the domestic law did not prescribe any procedure for contesting such decisions before the courts. The Government relied in this respect on Article 65 § 2 (20) of the CCP, which entitled the accused to contest the prosecutor's decisions "in accordance with a prescribed procedure" but failed to indicate any procedure applicable to the decisions in question. Secondly, those decisions did not concern the question of whether or not to institute criminal proceedings on account of the alleged ill-treatment, but the issue of the removal of certain officials dealing with the applicants' criminal case, based on their alleged partiality. In such circumstances, even assuming that those decisions were subject to appeal, such an appeal would not have been an effective remedy capable of providing redress in respect of the first applicant's particular grievances under Article 3 of the Convention.

233. Based on the above, the Court considers that at the material time there were no clear, effective and accessible remedies available to the applicants before the courts against the alleged inaction of the investigating authorities in respect of their complaints of ill-treatment. It is therefore not unreasonable that the first applicant lodged his application with the Court on 23 September 2004, that is about three and a half months after the Military Prosecutor's letter of 10 June 2004.

234. The situation is somewhat different, however, when it comes to the second and third applicants, who first tried to raise their allegations of

ill-treatment before the courts examining their criminal case, before coming to the Court (see paragraphs 92, 93, 105, 106 and 120 above). The Court considers in this respect that a complaint of ill-treatment raised before a trial court could not, as a general rule, be regarded as part of the normal process of exhaustion in respect of complaints of ill-treatment brought before the Court. Nevertheless, there may be exceptional circumstances in which such a procedure may be found to have provided an effective remedy in the particular circumstances of a case (see *Akulinin and Babich v. Russia*, no. 5742/02, §§ 25-34, 2 October 2008, and *Vladimir Fedorov v. Russia*, no. 19223/04, §§ 41-50, 30 July 2009). In this connection, the Court reiterates that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, given the context of protecting human rights. This rule is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case (see, among other authorities, *Akulinin and Babich*, cited above, § 30; *Vladimir Fedorov*, cited above, § 45; and *Delijorgji v. Albania*, no. 6858/11, § 54, 28 April 2015).

235. In the present case, the Court is mindful of the fact that, in a situation where the Military Prosecutor failed to take any decision on the applicants' allegations of ill-treatment, and they had no clear possibility to contest this failure before the courts, the applicants still tried to avail themselves of judicial protection. They complained to the Syunik Regional Court and the Criminal and Military Court of Appeal about the alleged ill-treatment and the alleged failure of the authorities to investigate their allegations at a trial which commenced only about five months after the Military Prosecutor's letter of 10 June 2004 (see paragraphs 88 and 91 above). Both the Syunik Regional Court and the Criminal and Military Court of Appeal took note of the applicants' allegations, heard witnesses and examined evidence in that respect and, when dismissing the allegations, based their conclusions on, *inter alia*, the dismissal of the same allegations by the Military Prosecutor, thereby implicitly upholding his conclusions (see paragraphs 94-104, 107 and 115 above). The Court of Cassation further addressed the question of the applicants' alleged ill-treatment and the alleged failure of the prosecutor to investigate those allegations, and decided to quash the judgments of the lower courts and to order that an investigation be carried out (see paragraphs 122-124 above). It is noteworthy that this investigation eventually culminated in the decision of the Acting General Prosecutor of 1 October 2007 rejecting the institution of criminal proceedings (see paragraph 137 above).

236. Furthermore, it does not appear that the judicial examination of the applicants' allegations of ill-treatment in the course of their trial was carried out from a purely procedural point of view, that is for the purpose of deciding whether to exclude certain evidence, such as the second applicant's

confession, as inadmissible. The Court notes in this connection that, while their criminal case was pending before the Criminal and Military Court of Appeal, the applicants attempted to re-launch the procedure under Article 177 of the CCP by applying to the General Prosecutor and requesting once again that an investigation be carried out into their allegations of ill-treatment (see paragraph 108 above). Both the General Prosecutor and the courts, which examined the applicants' complaint against the General Prosecutor, refused to examine the merits of the applicants' allegations of ill-treatment on the ground that they had already been examined and dismissed by the Syunik Regional Court in the course of the applicants' trial and were currently being examined by the Criminal and Military Court of Appeal. Moreover, it was found that the courts examining the applicants' criminal case were competent – and even obliged – to examine their allegations of ill-treatment and that that procedure was capable of leading to the institution of criminal proceedings (see paragraphs 109, 111 and 113 above).

237. Having regard to the above, the Court considers that, by raising their allegations of ill-treatment before the courts examining their criminal case, the applicants pursued a remedy which, in the particular circumstances of the case, was capable of being effective in respect of their complaints under Article 3 of the Convention. By contrast the courts, in the course of the procedure re-launched by the applicants under Article 177 of the CCP, as already indicated above, refused to examine the merits of the applicants' allegations of ill-treatment and did no more than refer to the findings reached by the courts in the course of the applicants' trial. Hence, the decisions taken in the course of that procedure, including the Court of Appeal's decision of 14 March 2006 which the Government alleged to be the "final decision" in respect of the second and third applicants, were taken in pursuit of a remedy which was superfluous and incapable of providing redress in the particular circumstances of the case. Those proceedings are, therefore, irrelevant for the calculation of the six-month time-limit.

238. The Court lastly notes that the second and third applicants – joined by the first applicant – lodged their application with the Court on 9 November 2006, that is after their allegations of ill-treatment had been dismissed in the course of their trial by both the Syunik Regional Court and the Criminal and Military Court of Appeal, the latter adopting its judgment on 30 May 2006. At that point their criminal case was still pending before the Court of Cassation. The Court reiterates, however, that the last stage of the exhaustion of domestic remedies may be reached shortly after the lodging of the application but before the Court determines the issue of admissibility (see *Karoussiotis v. Portugal*, no. 23205/08, § 57, ECHR 2011 (extracts), and *Delijorgji*, cited above, § 54). The Court observes that the Court of Cassation adopted its decision shortly after the second and third applicants lodged their application, namely on 22 December 2006, while the

last decision on the applicants' allegations of ill-treatment was taken by the Kentron and Nork-Marash District Court of Yerevan on 23 November 2007 (see paragraph 139 above).

239. The Court therefore concludes that there are no grounds to dismiss the applicants' complaints under Article 3 of the Convention for their failure to comply with the requirements of Article 35 § 1 of the Convention on the basis of the first two objections raised by the Government.

240. As regards the Government's objection that the applicants failed to exhaust the domestic remedies by not lodging an appeal against the decision of the Kentron and Nork-Marash District Court of Yerevan of 23 November 2007, the Court considers that this issue is closely linked to the substance of the applicants' complaint concerning the alleged lack of an effective investigation and must therefore be joined to the merits.

(iii) Conclusion

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

2. Merits

(a) The alleged ill-treatment

(i) The parties' submissions

(α) The Government

242. The Government contested the applicants' allegations of ill-treatment. They argued that on 19 and 20 April 2004 the applicants had been at military outposts and their identities had been unknown to the investigating team until 21 April 2004 when a necessity arose to invite and question them as witnesses. On that date, before being placed in a disciplinary isolation cell, the applicants were thoroughly examined by doctor S. and found to be "practically healthy", as was noted in the relevant Isolation Notices. On 24 April 2004, after the applicants were arrested as suspects, they were subjected to physical (medical) examinations and appropriate records were drawn up, namely the records of examination of a person's body. The physician made notes in the records that no injuries had been detected on the applicants' bodies. The records were drawn up at the military police arrest facility in accordance with a procedure prescribed by law, namely Paragraph 13 of Annex 14 of the Regulations for the Garrison and Sentry Services in the Armed Forces of Armenia. The applicants signed their respective records without making any comments or objections. Had the applicants been subjected to ill-treatment, their injuries would

undoubtedly have been revealed and recorded by the examining doctor. In any event, the applicants did not substantiate their allegations of ill-treatment with any evidence or submit any evidence refuting the results of the above examinations. Furthermore, they showed inactivity by failing to request a forensic medical examination or request the authorities to summon a doctor, despite this possibility being specifically mentioned in the Military Prosecutor's letter of 10 June 2004. The first applicant did not raise any complaints about his health at the time of his admission to Nubarashen pre-trial detention facility on 6 July 2004.

243. The Government further relied on some other evidence in support of their claims, namely the medical examinations of 21 May 2004, the testimony of the third applicant's cousin's husband, H.M., who had visited him in detention on 26 April 2004, the testimony of the officers who had transported the applicants to Yerevan, and the conclusions of the forensic medical experts of 10 September 2007.

244. The Government lastly argued that from the moment of his arrest, the first applicant had been provided with a lawyer, V.Y., who represented him from 24 to 26 April 2004 and was present during all the interviews, which ruled out the infliction of any ill-treatment. During that period the first applicant had failed to raise any complaints of ill-treatment or request a medical examination, despite the fact that his rights had been explained to him.

(β) The applicants

245. The applicants submitted that during the entire period when they had been questioned as witnesses they had been subjected to ill-treatment. From 23 April to 6 July 2004 they had been kept at the arrest facility of military unit no. 10724 which was under the authority of the military police, despite the fact that this facility was not intended for suspects or accused, who were required by law to be kept in pre-trial detention facilities administered by the Ministry of Justice. This was done in order for the law enforcement officers to be able to continue terrorising them and to conceal the injuries inflicted on them. Military unit no. 10724 was not even supposed to be used as a detention facility and this was the Military Prosecutor's Office's practice at the material time in order unlawfully to lock up, abuse and ill-treat servicemen suspected or accused of crimes.

246. The applicants further submitted that they had not been present when the Isolation Notices of 21 April 2004 were prepared and they had not even been examined by the doctor who had signed that document. Moreover, a doctor's signature on an isolation notice was required simply to certify that there were no contraindications to isolation due to the state of health of a serviceman liable to isolation. As regards the records of examination of a person's body dated 24 April 2004, they had signed those records after they had undergone torture and were in a state of shock. No

lawyer had been present during the preparation of those records and their rights had not been explained to them. Therefore they had not fully understood the meaning of those records and the legal consequences of signing them, and the fact that they had signed them did not mean that they agreed with their contents. Furthermore, one of the attesting witnesses who had signed those records, K.A., was of the opposite sex, which was prohibited under the law. This suggested that no examination whatsoever had been carried out, which was also demonstrated by the lack of clarity of the findings reached. In addition, the alleged examination was carried out in the presence of police officers. Also, the Government failed to specify the procedure in accordance with which that examination had been carried out. Finally, that examination had been carried out at the time of the applicants' admission to the military police arrest facility, while the law did not envisage the placement of a detainee in detention facilities administered by the military police. Thus, all the actions performed by the officers of that facility, including the examinations, had been unlawful.

247. The applicants also submitted that the medical examinations of 21 May 2004 had been conducted by psychiatrists who were to answer questions about their mental health. It was not clear how this evidence was able to show whether the applicants had any injuries.

248. As regards lawyer V.Y.'s participation in the case, the first applicant claimed that the lawyer had been invited by the investigator and his involvement, including the signing of records, was a pure formality. The lawyer's actions were essentially aimed at helping the investigator rather than defending him, and he never even met with the lawyer in private. The formality of the lawyer's involvement was also demonstrated by the fact that he had failed to be present at the examination of his body on 24 April 2004, whereas he was required by law to take part in all the investigative measures. The testimony given by the lawyer on 16 April 2007 had been false, as it was impossible for the lawyer not to have noticed the injuries to his face. This proved that the lawyer had not only been invited by the investigator, but had also been instructed by him.

249. The first and second applicants also claimed that the fact that they had not lodged any complaints about ill-treatment in the immediate aftermath was due to the fact that they were traumatised by the violence and feared for their safety, being unlawfully kept at the military police arrest facility. The first applicant also submitted that he had not been familiar with his rights until his relatives hired a lawyer. From the very first day when the lawyer started to work with him, he informed her about the ill-treatment and the lawyer took all the steps to raise this issue before the authorities.

250. Finally, as regards the investigation which was carried out following the remittal of the criminal case for further investigation, the statements of the military police officers were not credible as they were interested in covering up any ill-treatment because of their subordination

and even indirect involvement. The first applicant also submitted that the statement of the third applicant's cousin's husband, H.M., was not relevant to his case. Lastly, the letter of 6 March 2004 of the Military Police Chief of Armenia and the testimony of witnesses during the resumed trial in the Shirak Regional Court demonstrated that the law enforcement authorities had put forward different hypotheses during various stages of the investigation and used violence and intimidation against various servicemen to obtain testimony in support of those hypotheses.

(ii) The Court's assessment

(α) General principles

251. The Court observes at the outset that Article 3 enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no 26772/95, § 119, ECHR 2000-IV). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention, even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of Judgments and Decisions* 1998-VIII).

252. It reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C; and *Dougoz v. Greece*, no. 40907/98, § 44, ECHR 2001-II). In respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 of the Convention (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; *Selmouni*, cited above, § 99; *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; and *Bouyid v. Belgium* [GC], no. 23380/09, §§ 88 and 100, 28 September 2015).

253. In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see

Ireland v. the United Kingdom, cited above, § 161; *Labita*, cited above, § 121; and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

254. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *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, § 183, ECHR 2009). Similarly, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among other authorities, *Aksoy*, cited above, § 61; *Selmouni*, cited above, § 87; and *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010-...). Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under Article 3 of the Convention (see *Mikheyev v. Russia*, no. 77617/01, § 127, 26 January 2006).

(β) Application of the above principles in the present case

255. The Court notes that it is undisputed between the parties that, prior to the applicants' transfer from Nagorno Karabakh to Yerevan on 23 April 2004, they were questioned and kept at three different locations: first at the office of their military unit's commander, then at the Martakert Garrison Prosecutor's Office and finally at the Stepanakert Military Police Department. The Court is further mindful of its finding below under Article 5 of the Convention that the applicants' first questioning in the commander's office and their transfer to the Martakert Garrison Prosecutor's Office took place on 21 April 2004 as opposed to 19 April 2004 as alleged by the applicants (see paragraph 301 below).

256. The Government primarily relied on two types of documents dating from the relevant period in support of their claim that no ill-treatment had been inflicted on the applicants in that period: the Isolation Notices of 21 April 2004 (see paragraph 18 above) and the records of examination of a person's body of 24 April 2004 (see paragraph 31 above). The Court is not convinced, however, that these documents can be considered sufficiently credible in the circumstances of the case for the following reasons.

257. Firstly, both the Isolation Notices and the records of examination of a person's body were drawn up by officials subordinate to persons either indirectly involved in the alleged ill-treatment or to the authority whose employees were the alleged perpetrators. The Court reiterates in this connection that the forensic doctor carrying out a medical examination

must, *inter alia*, enjoy formal and *de facto* independence (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X).

258. Secondly, as regards the Isolation Notices, these do not even resemble a document which could be qualified as a medical report: they contained only one line dedicated to medical questions where a doctor's signature was present together with a phrase "practically healthy". There were no details whatsoever regarding the alleged examination carried out and any medical conclusions reached. Furthermore, it is not possible to determine at what time exactly these Isolation Notices were drawn up and whether they preceded or followed the alleged ill-treatment. In any event, since the allegations of ill-treatment concern the period from 21 to 23 April 2004, the Isolation Notices – being drawn up on 21 April 2004 prior to the applicants' transfer from their military unit to Martakert Garrison Prosecutor's Office – cannot serve as proof that no ill-treatment was inflicted on the applicants during the remainder of the period in question.

259. Thirdly, as regards the records of examination of a person's body, which were allegedly drawn up on 24 April 2004 at the time of the applicants' admission to the military police arrest facility, the Government referred to Paragraph 13 of Annex 14 of the Regulations for the Garrison and Sentry Services in the Armed Forces (see paragraph 196 above). However, Paragraph 13, as in force at the material time, prescribed the procedure for admission of servicemen to a disciplinary isolation cell, as opposed to a military police arrest facility in which the applicants were placed. Furthermore, even assuming that Paragraph 13 was applicable to the applicants' admission to the military police arrest facility, that provision did not mention any requirement to carry out a medical examination or even a so-called "examination of a person's body" at the time of admission. It is notable in this connection that even the general rules of custody applicable to arrestees, prescribed by the Law on Conditions for Holding Arrestees and Detainees, did not require any compulsory medical examinations at the time of admission to arrest facilities and stipulated that such examinations were to be carried out only if injuries were detected (see paragraph 182 above). Thus, it is not clear why and on what legal basis the applicants underwent the examinations in question, assuming that they were medical examinations, especially if they allegedly had no visible injuries.

260. Having regard to the examinations themselves, the Court notes that they were performed by the officer on duty, two deputy officers, two attesting witnesses and the medical assistant on duty. The records drawn up as a result of these examinations stated that they "examined the applicants' bodies" and that "nothing was detected on them" (see paragraph 31 above). The Court has serious doubts that these examinations could qualify as a medical examination, still less a thorough and credible one. It reiterates that medical examinations, which are an essential safeguard against ill-treatment of persons in custody, must be carried out by a properly qualified doctor and

without any police officer being present. The practice of cursory and collective examinations undermines the effectiveness and reliability of this safeguard (see *Akkoç*, cited above, § 118). Not only were the examinations in question not performed by a qualified doctor in the absence of any police officers, but they appear actually to have been performed by the police officers themselves, which seriously undermines this procedure. It is true that a medical staff member, K.G., took part in the examinations. However, K.G. was not a qualified doctor but a medical staff member of a lower rank, commonly referred to in the reports of the European Committee for the Prevention of Torture (the CPT) as a "feldsher", which can be roughly translated as a "medical assistant" or a "male nurse". The CPT does not rule out that medical screening on admission may also be performed by "feldshers" provided that they report to a doctor (see the CPT Report on its Visit to Ukraine in 2000, CPT/Inf(2002)23, § 108; also cited in *Dvoynykh v. Ukraine*, no. 72277/01, § 41, 12 October 2006). This did not, however, happen in the present case. Furthermore, the sole and identical conclusion reached in all three examinations, namely that "nothing was detected on the applicants' bodies", does not even resemble a medical opinion and suggests that only very cursory examinations were carried out, if any. In the light of all the above factors, the Court cannot accept the records in question as credible medical reports.

261. The Government further referred to the results of the medical examinations of 21 May 2004. The Court notes, however, that these were ordered so as to evaluate the applicants' mental health and competence to stand trial and had no connection with their allegations of ill-treatment (see paragraph 41 above). The results of these examinations are therefore irrelevant.

262. At the same time, the Court notes that there are no credible medical reports in the case file dating from the period when the applicants were allegedly subjected to ill-treatment. The first medical examinations undergone by the applicants were carried out only on 7 July 2004 following their admission to Nubarashen pre-trial detention facility, namely more than two months after the alleged ill-treatment, and no injuries were recorded (see paragraphs 59 and 61 above). In this connection, the Court cannot overlook the fact that, prior to their transfer to the pre-trial detention facility, the applicants had been kept at an arrest facility administered by the military police for more than two months, despite the fact that the CCP explicitly prohibited the holding of detainees at facilities intended for arrestees for more than three days (see paragraph 161 above). Even Annex 14 of the Regulations for the Garrison and Sentry Services in the Armed Forces referred to by the Government, assuming that it was applicable, prior to the amendments which entered into force on 12 June 2004 allowed the placement of only arrestees in disciplinary isolation cells as opposed to detainees (see paragraph 192 above). Thus, at the latest on 30 April 2004,

namely three days after the Arabkir and Kanaker-Zeytun District Court of Yerevan decided to detain the applicants (see paragraph 35 above), they should have been transferred from the military police arrest facility to a pre-trial detention facility administered by the Ministry of Justice. This requirement was considered to be a major safeguard against any physical abuse to which arrested persons could be subjected during their stay at police temporary arrest facilities, given that all detainees were required to undergo a medical examination upon their admission to pre-trial detention facilities (see paragraph 183 above). The applicants alleged that this had deliberately not been done in their case, in order to conceal their injuries and to continue their intimidation. In any event, no matter how regrettable this abuse of procedure was, in the absence of any credible medical reports which could corroborate the applicants' allegations of ill-treatment, the Court does not have sufficient evidence before it which would enable it to find beyond reasonable doubt that the applicants were subjected to treatment incompatible with the requirements of Article 3 of the Convention.

263. The Court therefore considers that there is insufficient evidence for it to conclude that there has been a substantive violation of Article 3 of the Convention.

(b) The alleged lack of effective investigation

(i) The parties' submissions

(α) The Government

264. The Government submitted that the authorities had carried out an effective investigation into the applicants' allegations of ill-treatment. In particular, the second applicant had testified on 18 May 2004 and stated that he had not been forced to make a confession. The first applicant's and his lawyer's complaints of 25 May and 8 June 2004 had been duly examined and dismissed by the letter of 10 June 2004. Despite the Military Prosecutor's suggestion made in that letter, none of the applicants had applied to undergo a medical examination. Moreover, two medical examinations had been conducted at the initiative of the authorities, namely on 24 April and 21 May 2004. The applicants' numerous motions challenging the impartiality of the investigators and the Military Prosecutor had also been examined and dismissed in reasoned decisions. Taking into consideration the results of the physical (medical) examinations of 24 April 2004 and other evidence available in the case file, it was established that their allegations were unfounded.

265. The applicants' allegations of ill-treatment had been further examined by the Syunik Regional Court and the Criminal and Military Court of Appeal during their trial, and found to be unfounded. In doing so, the Regional Court had heard the relevant investigators and army officials

and concluded that the allegations of ill-treatment were aimed at avoiding criminal responsibility. Lastly, after the remittal of the case for further investigation, numerous persons had been questioned and a forensic medical examination had been ordered. Based on all this evidence, the Acting General Prosecutor decided not to institute criminal proceedings due to the lack of a criminal act. This decision had been confirmed by the Kentron and Nork-Marash District Court of Yerevan.

(β) The applicants

266. The applicants submitted that the authorities had failed to carry out an effective investigation into their allegations of ill-treatment. They had lodged numerous complaints of ill-treatment before all the domestic instances and requested that criminal proceedings be instituted. The law required that their complaints be examined as a separate criminal case, regardless of the case against them. The first applicant also argued that he and his lawyer had lodged complaints, pointing out the perpetrators of the ill-treatment, but the Prosecutor's Office did not order a medical examination or identify and question any witnesses. Instead, fifteen days after his initial complaint had been lodged, the Military Prosecutor stated in a letter that a medical examination could be ordered if a relevant request were made. This had been done in order to delay any medical examinations and thereby to make it impossible to detect any evidence of ill-treatment. Moreover, he himself had no right to order a forensic medical examination since this right was reserved under Article 243 of the CCP to the investigating authority. Furthermore, there was no well-founded rejection of his complaints of ill-treatment by the investigating authority. Nor did the Regional Court and the Court of Appeal duly examine his complaints, contrary to the Government's claim, which is demonstrated by the fact that the Court of Cassation considered the examination carried out by those courts to be insufficient by remitting the case for a further investigation and specifically ordering a thorough examination of the allegations of ill-treatment.

(ii) The Court's assessment

(α) General principles

267. The Court reiterates that where an individual raises an arguable claim – or, as stated in *Labita*, makes a credible assertion – that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others*,

cited above, § 102; *Labita*, cited above, § 131; and *Poltoratskiy v. Ukraine*, no. 38812/97, § 125, ECHR 2003-V).

268. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and, if justified, punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Mikheyev*, cited above, § 108, and *Virabyan v. Armenia*, no. 40094/05, § 162, 2 October 2012).

269. Finally, the Court reiterates that for an investigation into alleged ill-treatment by State agents to be effective, it should be independent. The independence of the investigation implies not only the absence of a hierarchical or institutional connection, but also independence in practical terms (see *Oğur v. Turkey* [GC], no. 21594/93, § 91, ECHR 1999-III; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004; and also *Ergi v. Turkey*, 28 July 1998, § 83, Reports 1998-IV, where the public prosecutor investigating the death of a girl during an alleged clash between security forces and the PKK showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

(β) Application of the above principles in the present case

270. In the present case, while it is not in dispute between the parties whether the applicants raised an arguable claim of ill-treatment, the Court nevertheless considers it necessary to address this issue. It notes that, as already indicated above, the authorities were informed about the ill-treatment allegedly inflicted on all three applicants at the latest on 25 May 2004 when the first applicant lodged a complaint with, *inter alia*, the General Prosecutor and the Military Prosecutor (see paragraph 43 above). That complaint was sufficiently detailed, contained precise dates, locations, names of the alleged perpetrators and some methods of ill-treatment applied, and, in the Court's opinion, can be considered as a "credible assertion". While there was no medical evidence to support this complaint, the Court is mindful of its finding above that the absence of any credible medical reports was largely due to the authorities' failure to comply

with the domestic procedures (see paragraph 262 above). It is true that the first applicant's complaint was lodged with a delay of about a month after the alleged ill-treatment. However, the Court does not consider this delay to be of such duration as to deprive the complaint *ipso facto* of any substance and prospects of success. Furthermore, the Court cannot overlook the fact that throughout that period the applicants – in violation of the law – were kept in a facility subordinate to the authority whose employees were the alleged perpetrators of the ill-treatment and almost without any contact with the outside world, which must have provoked feelings of helplessness and fear in the applicants and served as a deterrent. It is therefore not surprising that the first applicant lodged his complaint immediately after he was allowed to meet with the lawyer of his choice (see paragraphs 42 and 43 above). Lastly, the Court notes that the first applicant's complaint was followed by another one lodged by lawyer Z.P. on 8 June 2004 who similarly alleged that all three applicants had been subjected to ill-treatment (see paragraph 44 above). Further allegations of ill-treatment were raised by the second and third applicants on 10 and 16 June 2004 respectively (see paragraphs 46 and 49 above). The Court therefore concludes that the applicants raised an arguable claim of having been subjected to ill-treatment and the authorities were under the obligation to carry out an effective investigation into those allegations.

271. Turning to the question of the effectiveness of the authorities' response, the Court considers that, taking into account the fact that a certain amount of time had already elapsed since the period complained of, the prosecution authorities should have reacted swiftly to the complaint of 25 May 2004 and taken immediate steps to verify the allegations raised. Any delay would have potentially resulted in loss of evidence and caused irreparable damage to the effectiveness of the investigation. This is especially so in view of the fact that the applicants had not by then undergone any credible medical examinations. Furthermore, the prosecution authorities were informed about the fact that the applicants had been kept at a military police arrest facility for a prolonged period of time and should have been alarmed by that fact. They had the legal powers to interview the applicants, the alleged perpetrators and any witnesses, to order medical examinations and to collect other evidence and should have pursued such investigative measures promptly. Moreover, the domestic law itself, namely Article 180 of the CCP, required that such an inquiry be carried out at the latest within ten days following the receipt of a complaint about a crime (see paragraph 151 above).

272. Instead, the prosecution authorities appear to have failed to carry out any inquiry, let alone a prompt one. Almost nobody, with the exception of the second applicant, was questioned, whether the first and third applicants, any witnesses or the alleged perpetrators, and no efforts were made to collect any evidence, including ordering medical examinations and

examining the crime scene. As regards the second applicant's interviews, the Court notes that the interview of 18 May 2004 was conducted by the two investigators who were the alleged perpetrators and, in any event, no detailed questions were posed regarding the alleged ill-treatment (see paragraph 39 above), while the interview of 29-30 June 2004 was conducted more than a month after the complaint of 25 May 2004 and was not followed up (see paragraph 54 above). Thus, even these measures cannot be considered as serious attempts to investigate the allegations of ill-treatment. Furthermore, not only did the Military Prosecutor fail to order any medical examinations, but he also made this conditional on some sort of additional request to be filed by the applicants, despite the fact that the complaint of 25 May 2004 contained sufficient reasons to order such examinations. No decision whatsoever – whether to institute criminal proceedings or to reject them – was taken and the allegations of ill-treatment were dismissed by the Military Prosecutor in a letter with practically no reasoning (see paragraph 45 above). In particular, the sole reason for their dismissal was the fact that the applicants had not raised any allegations of ill-treatment at the court hearing of 27 April 2004, during which the question of their placement in pre-trial detention was decided. Moreover, not only did the first applicant's and his lawyer's statements about the applicants' stay at the military police arrest facility not raise any concerns, but the Military Prosecutor even tried to justify it with reference to Annex 14 to the Regulations for the Garrison and Sentry Services which, as already indicated above, appears not to have been applicable to the applicants' case and, in any event, did not contain any provisions that would justify such a prolonged stay of the applicants in that facility.

273. It appears that some investigation into the applicants' allegations of ill-treatment was carried out by the Syunik Regional Court and the Criminal and Military Court of Appeal in the course of the applicants' trial, but this was implicitly found to be inadequate by the Court of Cassation when it decided to quash the applicants' conviction, including on the ground that it was necessary to carry out a further investigation into their allegations of ill-treatment (see paragraph 124 above).

274. As regards the investigation that followed this decision, the Court notes at the outset that it was carried out within the scope of the criminal case instituted against the applicants on account of murder, in which they were involved as the accused. There was no separate set of criminal proceedings instituted on account of the alleged ill-treatment under the relevant provisions of the Criminal Code. None of the alleged perpetrators was involved as a suspect and they continued to act as witnesses. The Court doubts that an investigation conducted on such a premise could be regarded as an inquiry whose purpose was truly and fully to investigate the applicants' allegations of ill-treatment and to identify and punish those responsible (see, *mutatis mutandis*, *Virabyan*, cited above, §§ 165-166).

Furthermore, it was conducted by the investigators of the Military Prosecutor's Office of Armenia and the Gugark Garrison Military Prosecutor's Office of Armenia, namely the authorities whose employees were implicated in the alleged ill-treatment, and could therefore not satisfy the requirement of independence and impartiality (see *Nalbandyan v. Armenia*, nos. 9935/06 and 23339/06, § 123, 31 March 2015).

275. Furthermore, while a number of interviews were carried out, it does not appear from the resulting decision of 1 October 2007 that the investigating authority gave serious consideration to the applicants' allegations of ill-treatment. This decision did nothing more than recapitulate the facts as presented by the alleged perpetrators, without any detailed assessment of the specific allegations raised by the applicants, including the circumstances of their initial deprivation of liberty and their subsequent placement in the military police arrest facility in violation of the law (see paragraph 137 above). Moreover, the Court cannot overlook the fact that some of these interviews contained practically identical texts, which seriously undermines their credibility (see paragraph 132 above). It is also surprising that the investigating authority decided to question the third applicant's cousin's husband H.M., who as it appears was personally acquainted with one of the alleged perpetrators, but not his father (see paragraph 134 above). Lastly, as regards the medical examinations ordered, it is not clear how a medical examination which was to be carried out three years after the alleged ill-treatment could produce any useful results, taking into account that the applicants did not allege that the ill-treatment, which they had allegedly undergone, had had a lasting effect on their health. The study of the applicants' medical files was similarly ineffective in view of the absence of any credible records of the applicants' alleged injuries dating from the material time.

276. In view of the above, the Court considers that, despite the specific instructions of the Court of Cassation in its decision of 22 December 2006, the investigating authorities can be said to have shown a lack of will to pursue this matter adequately and the system proved to be ineffective. In such circumstances, it is highly doubtful that further appeals lodged with the courts against the prosecutor's decision of 1 October 2007 would have produced a different result and proved to be an effective remedy. It is worth mentioning, nevertheless, that the applicants did contest the decision of 1 October 2007 before the first instance court but the latter, judging by its decision, appears to have failed to carry out any examination whatsoever (see paragraph 139 above). In view of the foregoing, the Government's objection as to non-exhaustion must be dismissed. The Court therefore concludes that the authorities have failed to carry out an effective investigation into the applicants' allegations of ill-treatment as required under Article 3 of the Convention.

277. There has accordingly been a procedural violation of Article 3 of the Convention in respect of all three applicants.

B. The alleged failure to provide the first applicant with requisite medical assistance during his hunger strike in detention

Admissibility

(a) The parties' submissions

(i) The Government

278. The Government submitted that the first applicant had received requisite medical assistance while on hunger strike. The medical assistance provided had been compatible with the CPT standards, in particular, he had had the right to access to a doctor and the right to medical treatment by qualified staff. Professional medical staff had been available at the pre-trial detention facility and the first applicant had been regularly visited and examined by the doctor, including during the hunger strike. All these medical check-ups had been noted in his medical file. Where any health problems had been revealed, he had immediately received in-patient treatment and medicine. The first applicant had received further treatment at the Hospital for Prisoners and continued to be under regular medical observation following his discharge.

279. The Government further submitted that there was no evidence that the first applicant had suffered any physical or mental harm as a result of the alleged lack of requisite medical assistance. Furthermore, there had not been any significant deterioration in the first applicant's health during the period in question.

(ii) The first applicant

280. The first applicant submitted that no requisite medical assistance had been provided to him in detention during his hunger strike and that the Government had failed to substantiate their arguments with any documents.

(b) The Court's assessment

281. The Court observes that it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 (see *Mouisel v. France*, no. 67263/01, § 38, ECHR 2002-IX). Although this Article cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical assistance (see *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005, and *Khudobin v. Russia*, no. 59696/00, § 93, ECHR 2006-XII (extracts)).

282. In the present case, the first applicant alleged that he had suffered treatment contrary to the requirements of Article 3, because he had been denied requisite medical or psychological assistance and had not been allowed to see his relatives during his hunger strike in detention.

283. The Court notes at the outset that the first applicant did not suffer from any diseases and his allegation that he required medical and psychological assistance rests on the sole fact of his being on hunger strike. The Court does not rule out that there may be situations in which a prisoner will require specific medical assistance or treatment as a result of a hunger strike and the denial of such assistance or treatment may lead to circumstances incompatible with the requirements of Article 3. It is therefore necessary to determine whether such a situation prevailed in the present case.

284. The Court observes that the first applicant was on hunger strike from 3 August to 5 November 2004. His medical file contains a record stating that he was under constant medical observation from 11 August 2004. It is not clear, however, whether this was indeed the case since the medical file does not contain any record of any specific medical check-up carried out in respect of the first applicant from the beginning of his hunger strike until his transfer to a hospital on 19 October 2004.

285. On the other hand, there is no evidence to suggest that those two and a half months of hunger strike had such an effect on the first applicant's physical or mental health or resulted in any emergency situations which would require medical assistance or treatment. Nor did the first applicant raise any such complaints during that period, his first complaint to that effect being made on the very day when he was transferred to hospital. Even in that complaint no details were provided of the alleged health problems and the medical assistance required (see paragraph 79 above). Furthermore, upon his admission to the hospital the first applicant underwent a number of examinations and no illnesses or complications were disclosed. He was diagnosed only with general emaciation caused by the hunger strike, for which he received treatment in hospital from 19 October to 2 November 2004. Thus, it appears that the authorities reacted to the first applicant's specific health needs and there is nothing to suggest that their response was belated or inadequate.

286. As to the first applicant's specific allegation that during his hunger strike he was also prevented from seeing his family, which exacerbated his suffering, the Court notes that neither the first applicant nor his lawyer complained about this measure before any competent authority, which raises doubts as to whether the first applicant has exhausted domestic remedies.

287. In the Court's opinion, any person on hunger strike undergoes a certain amount of suffering and distress. However, in the light of the above, it cannot be said that any suffering and distress which the first applicant may have experienced as a result of his hunger strike was caused or

exacerbated by any acts or omissions of the authorities and resulted in treatment incompatible with the requirements of Article 3.

288. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

289. The first applicant complained that his alleged deprivation of liberty between 19 and 24 April 2004 had been unlawful. He further complained that his detention from 24 August to 4 November 2004 had not been authorised by a court as required by law. He relied on Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

290. The Court notes that this and other complaints under Article 5 of the Convention were raised only by the first applicant. Therefore, it will henceforth refer to him as "the applicant" for the sake of simplicity.

A. The applicant's alleged deprivation of liberty between 19 and 24 April 2004

1. The parties' submissions

(a) The Government

291. The Government claimed at the outset that there was no evidence to support the applicant's allegation that he had been deprived of his liberty on 19 and 20 April 2004. In fact, on those dates the applicant had been on watch at a military outpost. Moreover, the applicant could not be deprived of his liberty on those dates because his identity was unknown to the investigative team and was revealed only during the second applicant's questioning at the military unit on 21 April 2004. The Government argued that the record made in the applicant's medical file which indicated "19 April 2004" as the starting date of his detention, contradicted other documentary materials concerning the applicant's detention and its origins were unclear. In this connection, a criminal inquiry had been initiated on 18 January 2008 in order to investigate the fact of a possible official falsification and it was established that this note had been made by mistake.

292. The Government further submitted that on 21 April 2004 the applicant had indeed been deprived of his liberty, but only as a disciplinary penalty. The penalty was imposed by order of the competent authority, namely the commander of the military unit, because of the first applicant's unauthorised absence, which qualified as a "grave disciplinary offence". He had then been transferred by the investigating team to Martakert Garrison Military Prosecutor's Office to be questioned as a witness in the murder case, since Article 206 of the CCP required witnesses to be interrogated at the location where the preliminary investigation had been carried out. After questioning, the applicant had been transferred to the Stepanakert Military Police Department where he was to serve his disciplinary penalty at the disciplinary isolation cell, in accordance with the Regulations for the Garrison and Sentry Services in the Armed Forces of Armenia. Finally, on 23 April 2004 the applicant had been transferred to Yerevan and placed in military unit no. 10724 as a protective measure under Article 98 of the CCP. On 24 April 2004 he had been arrested and placed in a military police arrest facility situated on the premises of that military unit, in accordance with the above Regulations.

293. The Government lastly argued that the disciplinary penalty in question had been imposed under Paragraphs 51 and 54 of the Disciplinary Regulations of the Armed Forces of Armenia approved by Government Decree no. 247 on 12 August 1996, as well as its Annex 5. When depositing its instrument of ratification, Armenia made a reservation under Article 5 of the Convention in respect of these domestic provisions. The reservation complied with the requirements of Article 57 of the Convention. In

particular, it was not of a general character and it contained a statement of the law concerned. In such circumstances, Article 5 of the Convention was not applicable to the applicant's deprivation of liberty prior to his arrest on 24 April 2004.

(b) The applicant

294. The applicant contested the Government's allegation that he had been deprived of his liberty only on 21 April 2004 and claimed that in reality this had happened on 19 April 2004. He further claimed that the Government's allegation was based on inaccurate evidence, while the record made in his medical file was accurate. The institution of criminal proceedings on account of a possible official falsification was simply another attempt by the authorities to conceal the truth.

295. The applicant further contested the Government's allegation that he had been deprived of his liberty for disciplinary reasons. In reality he had been arrested as a suspect in a criminal case. This had been done unlawfully and in violation of the prescribed procedures, which led to his being deprived of legal assistance and other rights enjoyed by a suspect. His unlawful arrest had pursued the aim of extorting a confession and the disciplinary penalty had been used simply as a pretext to cover up the irregularities. He had never been taken to a disciplinary isolation cell, where disciplinary penalties were to be served, but instead was at the disposal of agents of the Prosecutor's office investigating a criminal case. He had been kept at various law enforcement agencies and questioned as a suspect. The relevant Isolation Notice contained no notes concerning his admission and release from the disciplinary isolation cell. Consequently, the Government's reference to Armenia's reservation in respect of Article 5 of the Convention was groundless.

2. The Court's assessment

(a) Admissibility

296. The Court considers that the Government's objection concerning the applicability of Article 5 of the Convention to the applicant's alleged deprivation of liberty prior to his formal arrest on 24 April 2004 is closely linked to the substance of the applicant's complaint and must therefore be joined to the merits.

297. 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

(i) General principles

298. The Court reiterates that Article 5 of the Convention enshrines a fundamental right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. In proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. It is not concerned with mere restrictions on the liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4. The Court also points out that paragraph 1 of Article 5 makes it clear that the guarantees it contains apply to "everyone". Sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see, among other authorities, *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012).

(ii) Application of the above principles in the present case

299. The Court first considers it necessary to determine the period to be taken into account. As already indicated above, prior to the applicant's transfer from Nagorno Karabakh to Yerevan on 23 April 2004, he was questioned at three different locations: first at the military unit, then at the Martakert Garrison Prosecutor's Office and finally at the Stepanakert Military Police Department.

300. As regards the first interview, which took place in the office of the military unit's commander, the applicant does not appear to have alleged as such that his deprivation of liberty started from that moment but rather from the moment when he was taken from his military unit to the Martakert Garrison Military Prosecutor's Office. The parties agreed that this transfer happened immediately after the interview in the commander's office, but the applicant alleged this to have taken place on 19 April 2004, while the Government insisted that it was on 21 April 2004.

301. The Court notes in this respect that there is not sufficient evidence in the case file to support the applicant's allegation that his first interview and the subsequent transfer to Martakert took place on 19 April 2004 as opposed to 21 April 2004. Even in his original application form the applicant indicated "21 April 2004" as the starting date of his deprivation of liberty and then only later claimed this to be a misprint, the correct date allegedly being 19 April 2004. The only official document where the starting date of the applicant's deprivation of liberty was indicated as 19 April 2004 appears to be the applicant's medical file, which was opened following his transfer to Nubarashen pre-trial detention facility on 6 July 2004 (see paragraph 60 above). However, it was established by an inquiry that this had been an error, and the Court does not have reason to doubt that conclusion (see paragraph 141 above). All remaining evidence points to the fact that the applicants were taken to the commander's office and later to Martakert on 21 April 2004. In fact, there is not a single document in the case file related to the investigative and other measures involving the applicants taken in the context of the criminal case dated with an earlier date (see, for example, paragraphs 18-20 above). In such circumstances, the applicant's allegation that he was deprived of his liberty on 19 and 20 April 2004 is not supported by the materials of the case.

302. As regards the period following the applicant's questioning at his military unit which took place on 21 April 2004, the Government admitted that the applicant had been deprived of his liberty but alleged that this had nothing to do with the criminal investigation and was simply a disciplinary measure, and that this applied only to his stay at the Stepanakert Military Police Department, where he had been locked up on the nights of 21 and 22 April 2004 for the purpose of his disciplinary penalty. His transfer to the Martakert Garrison Military Prosecutor's Office had been effected simply because he was a witness in a criminal case who had to be questioned. Nor had he been deprived of his liberty upon arrival in Yerevan until his arrest on 24 April 2004. The Court, however, is not convinced by these arguments for the following reasons.

303. It appears from the materials of the case that on 21 April 2004, apparently at some point in the morning or early afternoon, the applicant was taken to the office of the commander of the military unit where he was questioned by law enforcement officers in connection with the criminal case. During this interview the commander allegedly decided to impose on the applicant a disciplinary penalty, namely ten days' isolation in a disciplinary isolation cell, for violation of military rules and ordered that he be detained by the Stepanakert Military Police Department. The Court notes, however, that while Order no. 112 and the relevant Isolation Notice issued by the commander (see paragraph 18 above) appear to have served as the formal ground for the applicant's ensuing deprivation of liberty, all the

facts suggest that the applicant was in reality deprived of his liberty for the purpose of the criminal investigation.

304. Firstly, there is no material in the case file to suggest that the applicant was ever placed in a disciplinary isolation cell to serve his alleged penalty. In fact, none of the relevant procedures prescribed by the Regulations for the Garrison and Sentry Services in the Armed Forces of Armenia, which were applicable in cases of disciplinary isolation, were followed (see paragraphs 190-199 above). Instead, immediately after his interview in the commander's office, the applicant was taken by law enforcement officers to a Prosecutor's Office in Martakert for further questioning and later that day to a military police department in Stepanakert where he was kept for two nights until 23 April 2004 and allegedly questioned again. The Government's allegation that the applicant was placed in a disciplinary isolation cell at the military police department in Stepanakert is not supported by any evidence, such as any admission records or other documents.

305. Secondly, the documents which provided the legal basis for the applicant's deprivation of liberty, namely Order no. 112 and the relevant Isolation Notice, were couched in terms lacking clarity and raising doubts as to their credibility. Thus, the Isolation Notice simply stated that the applicant had committed a "VMR" without providing any details whatsoever. The Government's allegation that the violation committed was unauthorised absence is not supported by any documentary evidence. The Order itself did not mention anything about any violation of military rules and simply stated that the first applicant was "considered to be isolated by the Stepanakert Military Police Department". The Court notes that even the Court of Cassation, in its decision of 22 December 2006, appears to have failed to comprehend the nature of the applicant's isolation and expressed doubt as to whether this may have led to unlawful deprivation of liberty, and ordered an investigation into this fact (see paragraph 124 above).

306. Thirdly, it follows from the Military Prosecutor's letters of 23 April and 10 June 2004 that all the measures taken in respect of the applicant from 21 April 2004 onwards were implemented for the purpose of the criminal case and had nothing to do with any disciplinary penalty (see paragraphs 21 and 45 above). The same follows from the testimony of the relevant investigators and military police officers before the trial court (see paragraphs 95 and 96 above).

307. The Court further disagrees with the Government's claim that the applicant's transfer to the Martakert Garrison Military Prosecutor's Office for questioning as a witness did not amount to deprivation of liberty. Firstly, this was done after the applicant was already considered to be formally "isolated". Secondly, the applicant was never summoned for questioning in his capacity as a witness, as required by the CCP (see paragraphs 169 and 170 above), but instead was handed over by his military command to

law enforcement officers. Starting from that moment he was under their full control and nothing suggests that he was free to leave at any point or that such a handover was part of normal military duty imposed on servicemen. Furthermore, contrary to the Government's claim, Article 206 of the CCP allowed questioning of witnesses also at their location and there was no requirement to transfer them to a law enforcement agency (see paragraph 171 above). In any event, it is questionable whether Article 206 was applicable to the applicant's case, since his status as a witness appears to have been only a formality. All the circumstances of the case, including the fact of his handover to the law enforcement agents, appear to suggest that in reality he was already regarded and treated as a suspect.

308. The same concerns the applicant's transfer to Yerevan on 23 April 2004. The Government alleged that upon his arrival in Yerevan the applicant had been taken to military unit no. 10724 and placed there as a protective measure, thereby implying that he was at liberty until his arrest and placement on the following day in the military police arrest facility situated in the same military unit. They failed, however, to produce in this respect any arguments or evidence, including any evidence related to the procedure concerning protection measures prescribed by Article 98 of the CCP (see paragraph 176 above). At the same time, the evidence in the case file suggests that upon his arrival in Yerevan the applicant was handed over to the Military Police Department of Armenia (see paragraph 22 above). This is also consistent with the applicant's complaint of 25 May 2004, in which he alleged that he had spent the night of 23 April 2004 on the premises of the military police (see paragraph 43 above). Thus, the Government's allegation contradicts the materials of the case and there is nothing in the case file to support their claim that the applicant was taken to military unit no. 10724 immediately upon his arrival in Yerevan and, moreover, remained at liberty until his transfer to the arrest facility. The Court also finds it hard to accept that the applicant, who had until then been deprived of his liberty and was already suspected of a crime, would have been set free upon his arrival in Yerevan, even within the premises of a military unit.

309. Based on the above, the Court considers that there is sufficient evidence to conclude that starting from the moment when the applicant was taken from his military unit to be transported to the Martakert Garrison Military Prosecutor's Office, which – it is safe to assume – happened before 2 p.m. on 21 April 2004 (taking into account that the first interview at that agency took place at 2.05 p.m. (see paragraph 19 above)), and until his formal arrest on 24 April 2004 at 6.35 p.m., that is the moment when the record of his arrest was drawn up at the Military Police Department in Yerevan (see paragraph 27 above), the applicant was deprived of his liberty for the purposes of the criminal investigation. Throughout that period the applicant was under the control of law enforcement officers and was

questioned as a witness even if already regarded and treated as a suspect. The authorities, in doing so, did not resort to the arrest procedure prescribed by Article 128 of the CCP applicable in such cases (see paragraph 155 above) and appear to have used the alleged disciplinary penalty as a formal pretext to deprive the applicant of his liberty. The Court cannot but conclude that the applicant's deprivation of liberty during that period was arbitrary and lacked proper legal basis.

310. Having reached this conclusion, the Court considers it necessary to address the Government's objection regarding the applicability of Article 5 of the Convention to the applicant's deprivation of liberty prior to his formal arrest on 24 April 2004. The Court notes that Armenia did indeed make a reservation at the time of ratification of the Convention whereby it declared that Article 5 did not apply to disciplinary measures, such as detention in a disciplinary isolation cell, imposed under the Disciplinary Regulations of the Armed Forces of Armenia. The Court reiterates that, in order to be valid, a reservation must satisfy a number of conditions (for a list of the relevant conditions see, among other authorities, *Grande Stevens and Others v. Italy*, nos. 18640/10, 18647/10, 18663/10, 18668/10 and 18698/10, § 207, 4 March 2014). The Court does not, however, find it necessary to examine the validity of Armenia's reservation in the particular circumstances of the case for the following reasons.

311. In the Court's opinion, it would be unacceptable for a Contracting Party to avoid responsibility under the Convention by formally resorting to certain procedures prescribed by the domestic law, in whose respect a reservation has been made, but in reality pursuing aims for which those procedures were not designed. The Court has already established above that the disciplinary penalty was only a formal pretext and the true reason for the applicant's deprivation of liberty was the criminal investigation. Moreover, the disciplinary penalty in question appears never even to have been executed. In such circumstances, Armenia's reservation cannot be applied to the facts of the case and the Government's objection must be dismissed.

312. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

B. The applicant's detention between 24 August and 4 November 2004

1. Admissibility

313. 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.

2. Merits

(a) The parties' submissions

(i) The applicant

314. The applicant submitted that he had been detained without a court decision between 24 August and 4 November 2004 by virtue of Article 138 § 3 of the CCP. However, that Article allowed deprivation of liberty on grounds not envisaged by Article 5 § 1 of the Convention. Therefore, his detention on the basis of that provision had been unlawful within the meaning of Article 5 § 1. Furthermore, pursuant to Article 18 of the Constitution, as in force at the material time, a person could be detained only by a court decision. Thus, the extension of his detention had been unlawful since there was no court decision authorising it and it had been based solely on Article 138 § 3 of the CCP, which was incompatible with the Constitution.

(ii) The Government

315. The Government submitted that on 27 April 2004 the applicant was detained by a court decision until 24 June 2004. This detention was then extended by the court for another two months until 24 August 2004. From 5 August to 9 September 2004 the applicant was familiarising himself with the materials of the case and the running of his detention period was suspended during that period on the basis of Article 138 § 3 of the CCP. The applicant's detention during that period was not calculated in the general period of his detention, which restarted on 9 September 2004 and should have ended on 27 September 2004. However, five days prior to the end of the detention period, namely on 22 September 2004, the prosecutor transmitted the applicant's criminal case to a court and his detention period from that moment was again suspended on the basis of Article 138 § 3 of the CCP.

(b) The Court's assessment

316. The Court reiterates that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all laws be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports of Judgments and Decisions* 1998-VII).

317. The Court notes that it has already examined similar complaints in a number of cases against Armenia, in which it concluded that there had been a violation of Article 5 § 1 of the Convention in that the applicants' detention was not based on a court decision and was therefore unlawful within the meaning of that provision. Article 138 § 3 of the CCP, which allowed a person to remain in detention without a court decision after the prosecutor transmitted the case to the court, was found to fail to satisfy the principle of legal certainty (see *Poghosyan v. Armenia*, no. 44068/07, §§ 56-64, 20 December 2011; also *Piruzyan v. Armenia*, no. 33376/07, §§ 81-82, 26 June 2012, *Malkhasyan v. Armenia*, no. 6729/07, §§ 62-63, 26 June 2012, *Sefilyan v. Armenia*, no. 22491/08, §§ 76-77, 2 October 2012, and *Minasyan v. Armenia*, no. 44837/08, §§ 52-53, 8 April 2014).

318. In the present case, the applicant was similarly kept in detention without a court decision between 24 August and 4 November 2004 by virtue of Article 138 § 3 of the CCP. It is true that at the material time the wording of that Article was slightly different and it permitted continued detention also on the ground that the accused was familiarising himself with the case file, which apparently took place in the applicant's case between 24 August and 9 September. However, this does not affect the Court's findings. During that period there was similarly no court decision authorising the applicant's detention, in violation of Article 18 of the Constitution and Article 136 of the CCP, there were no time limits prescribed against an indefinite stay in detention, and the detention was permitted by reference to matters wholly extraneous to Article 5 § 1 such as the accused familiarising himself with the case file (see, in this respect, also *Baranowski v. Poland*, no. 28358/95, § 57, ECHR 2000-III, and *Ječius v. Lithuania*, no. 34578/97, § 59, ECHR 2000-IX). It follows that the applicant's detention between 24 August and 4 November 2004 was unlawful within the meaning of Article 5 § 1.

319. There has accordingly been a violation of Article 5 § 1 of the Convention on this ground.

IV. ALLEGED VIOLATION OF ARTICLE 5 §§ 2, 3 AND 4 OF THE CONVENTION

320. The first applicant complained that he had been given no reasons for his arrest, that he had not been brought promptly before a judge and that he had not been able to contest the lawfulness of his arrest between 19 and 27 April 2004. He relied on Article 5 §§ 2 and 4 of the Convention. The Court considers that the applicant's complaints are to be examined under the provisions relied on and also Article 5 § 3 of the Convention, which read as follows:

> "2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. The parties' submissions

1. The applicant

321. The applicant submitted that, starting from 19 April 2004 and during the period when he was questioned as a witness, it was not explained to him that he was in fact under arrest, and no reasons for his arrest were given. He was not formally charged with a crime during those days, nor was his arrest official, but was carried out on internal instructions of the Military Prosecutor's Office. He was unaware of the duration of his arrest, by whom it was ordered and whether and how he could appeal against it. He was not brought promptly before a judge, this was done only on 27 April 2004, which was about eight days after he had been taken into custody, and he had no opportunity to clarify in the meantime whether his deprivation of liberty was lawful.

2. The Government

322. The Government, with reference to Armenia's reservation in respect of Article 5 of the Convention, refrained from making any submissions in respect of these complaints.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) The right to be informed promptly of the reasons for arrest

324. The Court reiterates that Article 5 § 2 requires that any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed

"promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 40, Series A no. 182).

325. The Court is mindful of its finding above that the applicant was deprived of his liberty on 21 April 2004, when he was taken from his military unit to the Martakert Garrison Military Prosecutor's Office. He was, however, treated formally only as a witness and was never formally notified about the fact that he was actually under arrest and suspected of a crime. Having regard to the applicant's questioning of 21 April 2004, the Court does not consider that this could have added much clarity to the applicant's understanding of the reasons why he had been deprived of his liberty (see paragraph 19 above). Thus, it appears that the applicant was informed about the reasons for his deprivation of liberty only on 24 April 2004 at around 6.35 p.m. when the record of his arrest was drawn up which contained an indication of the suspicion against him (see paragraph 27 above). This was more than three days after the applicant had been deprived of his liberty and undoubtedly fell short of the promptness requirement contained in Article 5 § 2 of the Convention.

326. There has accordingly been a violation of Article 5 § 2 of the Convention.

(b) The right to be brought promptly before a judge

327. The Court reiterates that Article 5 § 3 of the Convention requires that a person arrested under Article 5 § 1 (c) of the Convention on suspicion of having committed an offence be brought promptly before a judge or judicial officer, to allow detection of any ill-treatment and to keep to a minimum any unjustified interference with individual liberty. While promptness has to be assessed in each case according to its special features (see, among other authorities, *Aquilina v. Malta*, [GC], no. 25642/94, § 48, ECHR 1999-III), the strict time constraint imposed by this requirement of Article 5 § 3 leaves little flexibility in interpretation, otherwise there would be a serious weakening of a procedural guarantee to the detriment of the individual and the risk of impairing the very essence of the right protected by this provision (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 62, Series A no. 145-B, in which periods of more than four days in detention without appearance before a judge were held to be in violation of Article 5 § 3, even in the special context of terrorist investigations; *McKay v. the United Kingdom* [GC], no. 543/03, § 33, ECHR 2006-X; and *Kandzhov v. Bulgaria*, no. 68294/01, § 65, 6 November 2008, in which a period of three days and twenty-three hours was found to be not "prompt").

328. In the present case, the Court is mindful of its findings above that the applicant's deprivation of liberty prior to his formal arrest on 24 April 2004 was effected, even if not formally, for the purposes of a criminal investigation and apparently on a suspicion of his having committed an offence. Article 5 § 3 of the Convention is, therefore, applicable to the applicant's case and his first appearance before a judge should have been effected promptly after his deprivation of liberty on 21 April 2004 which happened at some point before 2 p.m. However, the applicant was brought before a judge only on 27 April 2004, that is about six days later (see paragraph 35 above).

329. The Court notes that the domestic law required that a person arrested in the context of criminal proceedings be brought before a judge at the latest within 72 hours following his taking into custody (see paragraph 156 above), which did not happen in the applicant's case. Had the applicant been "arrested" as required by law instead of having been deprived of his liberty under a disciplinary pretext, the authorities would have had to comply with this requirement. Thus, the primary reason why the applicant was brought before a judge with a significant delay of about six days appears to have been the fact that he had been deprived of his liberty in an arbitrary manner prior to his formal arrest on 24 April 2004. Bearing this in mind, and having regard to the Court's case-law on this matter, the Court does not consider that the applicant's appearance before a judge was "prompt" within the meaning of Article 5 § 3.

330. There has accordingly been a violation of Article 5 § 3 of the Convention.

(c) The right to take proceedings under Article 5 § 4

331. The Court reiterates that Article 5 § 4 requires that every arrested or detained person be entitled to take proceedings to have the lawfulness of his detention decided speedily by a court (see *Hassan v. the United Kingdom* [GC], no. 29750/09, § 98, ECHR 2014). It further points out that, where the procedure followed for bringing a person before the "competent legal authority" under Article 5 § 3 culminates in a decision by a "court" ordering or confirming deprivation of the person's liberty, the judicial control of lawfulness required by Article 5 § 4 is incorporated in this initial decision (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12).

332. The applicant's complaint under Article 5 § 4 is therefore closely linked to his complaint under Article 5 § 3 and must be similarly declared admissible.

333. In view of its finding above under Article 5 § 3 that the automatic judicial review of the applicant's deprivation of liberty failed to meet the requirement of "promptness", the Court does not consider it necessary to

examine separately the complaint under Article 5 § 4, which raises similar issues.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

334. 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

335. The applicants each claimed 30,000 euros (EUR) in respect of non-pecuniary damage, including EUR 25,000 for a violation of Article 3 and EUR 5,000 for a violation of Article 5.

336. The Government submitted that the applicants' claims were unfounded, unsubstantiated and excessive.

337. The Court notes that the second and third applicants did not raise any complaints under Article 5 of the Convention. This part of their claims must therefore be dismissed. As to the remainder of their claims, the applicants have undoubtedly suffered non-pecuniary damage as a result of the violations found. Ruling on an equitable basis, it awards the first applicant EUR 20,000 and the second and third applicants EUR 15,000 each in respect of non-pecuniary damage.

B. Costs and expenses

338. The applicants did not claim any costs and expenses.

C. Default interest

339. 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. *Decides* to join to the merits the Government's claims of the alleged non-exhaustion of domestic remedies and of the inapplicability of Article 5 of the Convention to the first applicant's deprivation of liberty prior to his formal arrest on 24 April 2004, and *rejects* them;

2. *Declares* the first applicant's complaint about the alleged lack of requisite medical assistance in detention inadmissible and the remainder of the applications admissible;

3. *Holds* that there has been no substantive violation of Article 3 of the Convention;

4. *Holds* that there has been a procedural violation of Article 3 of the Convention in respect of all three applicants;

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the first applicant, in that his deprivation of liberty from 21 to 24 April 2004 and from 24 August to 4 November 2004 was unlawful;

6. *Holds* that there has been a violation of Article 5 §§ 2 and 3 of the Convention in respect of the first applicant;

7. *Holds* that there is no need to examine the first applicant's complaint under Article 5 § 4 of the Convention;

8. *Holds*
(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) to the first applicant and EUR 15,000 (fifteen thousand euros) to the second and third applicants each, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(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;

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Mirjana Lazarova Trajkovska
President

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

M.L.T.
A.W.

CONCURRING OPINION OF JUDGE SAHAKYAN

Although I agree with the final conclusions of the Court, I cannot subscribe to the reasoning and arguments – or rather the absence thereof – employed in establishing the jurisdiction of the Republic of Armenia under Article 1 of the Convention. The majority essentially came up with a truncated line of argument by simply making reference to the Grand Chamber judgment in *Chiragov and Others v. Armenia* (no. 13216/05, §§ 169-186, ECHR 2015). Such an approach, in my opinion, is not only unjustified in terms of the clarity required of international judicial institutions in the application of established principles, but also liable to lead to further confusion between the different standards of extraterritorial jurisdiction and attribution.

The case at hand is a clear-cut example of a "State agent authority and control" exception, as the judgment itself recognises in the description of the factual circumstances of the case. In such situations, extraterritorial jurisdiction is established on account of the fact that individuals and persons fall under the control of State agents operating on a territory outside of the recognised territorial boundaries of that State. This exception is clearly different and distinguishable from the "effective and overall control over a territory" exception, of which the Cyprus cases, addressed in more detail below, stand as a classic example. The difference between the "State agent authority and control" exception and the "effective control over an area" exception has been vividly described by the Court in its *Al-Skeini and Others v. the United Kingdom* judgment ([GC], no. 55721/07, §§ 133-140, ECHR 2011). In that case the Court stated as follows:

> "[A]s an exception to the principle of territoriality, a Contracting State's jurisdiction under Article 1 may extend to acts of its authorities which produce effects outside its own territory ... The statement of principle, as it appears in [the case-law], is very broad: the Court states merely that the Contracting Party's responsibility 'can be involved' in these circumstances" (ibid., § 133)."

One such case, according to the Court, is the situation in which "through the consent, invitation or acquiescence of the Government of that territory, it exercises all or some of the public powers normally to be exercised by that Government" (ibid., § 135).

Hence, the Court clarified its position as follows:

> "[W]here, in accordance with custom, **treaty or other agreement**, authorities of the Contracting State carry out executive or judicial functions on the territory of another State, the Contracting State may be responsible for breaches of the Convention thereby incurred, as long as the acts in question are attributable to it rather than to the territorial State" [emphasis added] (ibid.; see also *Drozd and Janousek v. France and Spain*, [GC], no. 12747/7, § 91, 26 June 1992)."

I fail to see any reason whatsoever why the said principle should not apply equally with regard to non-recognised States or non-State actors

which have the core attributes of statehood. Whether or not the entity entering into an agreement with a State and providing its consent to that State exercising certain forms of jurisdiction over its territory is itself a State does not alter the nature of the State's involvement or the attribution of acts of that State's officials. In both cases these will be acts of that State's agents exercising official functions on a territory controlled by a different entity, whatever that entity's international legal personality under public international law.

Applying the language of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts ("ASR"), the conduct of organs of a State can be defined as follows:

> "1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.
>
> 2. An organ includes any person or entity which has that status in accordance with the internal law of the State (GA Resolution 56/83, Annex, UN Doc. A/56/589, 28 January 2002)."

It is through such conduct of State organs exercising government functions that the jurisdiction of the Republic of Armenia over the applicants is established in the case at hand. The geographical location of such conduct or the nature of the entity consenting to the exercise of such conduct is thus completely irrelevant for the purposes of attribution of the conduct and the establishment of jurisdiction through such conduct.

In this connection it is also important to reiterate that, unlike the situation in Cyprus (and many other situations involving non-State actors or unrecognised States), the Security Council has never called on the international community not to recognise the Nagorno-Karabakh Republic. Thus, there has never been an act of collective non-recognition by the international community.

With regard to the situation in Cyprus, Security Council Resolution 541 explicitly deplored "the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus" and described it as "invalid". The Security Council further called upon all States "not to recognize any Cypriot State other than the Republic of Cyprus" (SC Resolution 541, 18 November 1983, paragraphs 1, 2 and 7).

The Security Council acted in a similar way in the case of Southern Rhodesia, where it decided to "call upon all States not to recognize this illegal racist minority regime in Southern Rhodesia" (SC Resolution 216 (1965), 12 November 1965, paragraph 2) and called upon "all States ... not to entertain any diplomatic or other relations with it" (SC Resolution 217 (1965), 20 November 1965, paragraph 6), and in the case of the Republika Srpska, in respect of which the Security Council strongly affirmed "that any

entities unilaterally declared or arrangements imposed in contravention [of the territorial integrity of Bosnia and Herzegovina] will not be accepted" (SC Resolution 787 (1992), UN Doc. S/RES/787, 16 November 1992, paragraph 3).

This, however, has never been the case with the Nagorno-Karabakh Republic. None of the Security Council resolutions addressing the situation in the Nagorno-Karabakh Republic (Resolutions 822 of 30 April 1993, 853 of 29 July 1993, 874 of 14 October 1993 and 884 of 12 November 1993) has ever gone so far as to question the lawfulness of the declaration of independence of the NKR or to call upon the international community not to recognise the NKR.

Hence, in the case at hand, the Agreement of 25 June 1994 on Military Cooperation between the Government of Armenia and the Government of the Nagorno-Karabakh Republic plays a central role, by clearly providing for the jurisdiction of the Armenian authorities over Armenian conscripts serving on the territory of the Nagorno-Karabakh Republic. This factor plays a key role in establishing the jurisdiction of the Republic of Armenia and is a fact neglected by the Court.

The reference to the case of *Chiragov and Others v. Armenia* is thus not warranted. Using this line of argument in order to establish jurisdiction would be justified if the *Chiragov* judgment amounted to an establishment of Armenia's jurisdiction over the territory of NKR and surrounding territories through control by Armenia, **and if the acts at issue were attributable to the NKR authorities instead of the Armenian authorities**.

Thus, in its *Al-Skeini* judgment the Court clarified its position as follows:

> "Another exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration .... Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights" (*Al-Skeini*, § 138; see also *Catan and Others v. Moldova and Russia*, [GC] nos. 43370/04, 8252/05 and 18454/06, § 106, 19 October 2012)."

Hence, the "effective control over an area" exception applies in situations where the violation is attributable to the local administration; however, the need to establish such attribution is obviated by the fact that the territory is

overwhelmingly controlled by a State Party to the Convention, whose responsibility is thus engaged.

Similarly, in *Cyprus v. Turkey* ([GC], no. 25781/94, § 77, ECHR 2001-IV), the Court stated as follows:

> "[I]t is to be observed that the Court's reasoning is framed in terms of a broad statement of principle as regards Turkey's general responsibility under the Convention for the policies and actions of the 'TRNC' authorities. Having effective overall control over northern Cyprus, its responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey's 'jurisdiction' must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey."

In the case at hand we are not talking about Armenia's responsibility under the Convention for the policies and actions of the Nagorno-Karabakh authorities. Instead, the issue is Armenia's responsibility under the Convention for the actions of the Armenian authorities on a territory outside of its internationally recognised borders.

Consequently, this case deals with the acts of a State on the territory of a non-State-actor or an unrecognised State with which it has, as stated in *Chiragov*, a "high degree of integration" (whatever the meaning of that concept may be under international law). As such it is distinct both in fact and in law, as well as in the way in which the State's responsibility is engaged, from situations that deal with the acts of a non-State actor existing on a territory with a significant military presence of a member State ("effective and overall control", as applied in the Cyprus cases).

I therefore believe that Armenia has jurisdiction, but for a completely different reason, namely the direct involvement of its agents, and I also find the reference to the *Chiragov* judgment to be immaterial.