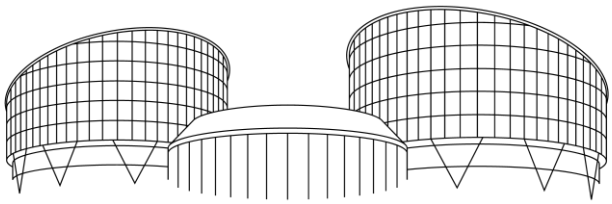

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ASHOT HARUTYUNYAN v. ARMENIA

(Application no. 34334/04)

JUDGMENT

STRASBOURG

15 June 2010

FINAL

15/09/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ashot Harutyunyan v. Armenia**,**

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

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 25 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 34334/04) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Ashot Harutyunyan ("the applicant"), on 14 September 2004.

2. The applicant, who had been granted legal aid, was represented by Mr H. Alumyan, a lawyer 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. On 7 December 2006 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the alleged lack of requisite medical assistance in detention, the applicant's placement in a metal cage during the appeal proceedings and the alleged lack of equality of arms in the question of calling witnesses to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. On 2 April 2009 the applicant's wife and two children informed the Court that the applicant had died in prison on 20 January 2009. His daughter, Ms Arusyak Harutyunyan, expressed the wish to pursue the application on his behalf.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952. At the time of his death he was serving his sentence at the Kosh penitentiary institution.

A. The criminal proceedings against the applicant

6. On 29 November 2001 criminal proceedings were instituted in respect of the applicant on account of fraudulent acquisition of property and falsification of documents. The applicant, who had no previous convictions, was suspected of defrauding his business partner, V.G.

7. On 8 February 2002 the investigating authority ordered an opinion to be prepared by a handwriting expert. On 8 May 2002 the investigating authority ordered two accounting expert opinions to be prepared by two accounting experts V.A. and A.M.

8. On 8 July 2002 the investigating authority recognised V.G. as a victim and as the civil plaintiff.

9. On 14 March 2003 the applicant was formally charged with the above offences, and a new charge of tax evasion.

10. On 6 May 2003 the Kentron and Nork-Marash District Court of Yerevan (*Երևան քաղաքի Կենտրոն և Նորք-Մարաշ համայնքների առաջին ատյանի դատարան*) decided to detain the applicant.

11. On 12 June 2003 the prosecutor approved the indictment, which was then submitted to the courts. Attached to the indictment was the list of persons subject to be called to court. This list included the accused, the victim, ten witnesses, including the applicant's accountant K.S. and treasurer K.M., and the two accounting experts V.A. and A.M.

12. On 14 June 2003 the criminal case against the applicant was put before the Malatia-Sebastia District Court of Yerevan (*Երևան քաղաքի Մալաթիա-Սեբաստիա համայնքի առաջին ատյանի դատարան*).

13. On 3 December 2003 the victim lodged his civil claim seeking damages in the amounts of 34,159,008 Armenian drams (AMD) and 119,000 United States dollars (USD).

14. On 27 January 2004 the Malatia-Sebastia District Court of Yerevan found the applicant guilty as charged and sentenced him to seven years in prison. The court also fully granted the victim's civil claim for damages. The court based its judgment on, *inter alia*, the statements of ten witnesses examined in court, including accountant K.S. and treasurer K.M, an act prepared by the tax authority specialists, two court-ordered accounting

expert opinions, the statements of accounting experts V.A. and A.M., and a handwriting expert opinion.

15. On 10 February 2004 the applicant lodged an appeal with the Criminal and Military Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարան*). The applicant also submitted written explanations concerning the civil claim, in which he requested the Court of Appeal to call and examine the victim's accountant S.H. as a witness. He also requested that accountant K.S. and treasurer K.M. be called for additional examination. He further asked to call three other persons, K., H. and Z. To substantiate his request to have accountants S.H. and K.S. called and examined, the applicant submitted to the court two accounting reports prepared by them which, according to him, contained exculpatory information.

16. On 19 March 2004 the Criminal and Military Court of Appeal held its first hearing. In the courtroom the applicant was placed in a metal cage which measured about 3 sq. m. The applicant was represented by two defence counsel. At the hearing, the applicant's defence counsel filed a motion with the court, arguing that the applicant's placement in a metal cage in the presence of many people, including relatives and friends, amounted to degrading treatment and humiliated him. Furthermore, this violated the principle of equality of arms, because the applicant, being in a cage, was not able to feel equal to the other parties. The fact that the applicant was a detainee was not sufficient justification to keep him in a metal cage during the court hearings. Nor did the law on arrested and detained persons prescribe placement of a detainee in a metal cage in the courtroom. The defence counsel requested the court to release the applicant from the cage and to allow him to be seated in the seats meant for the parties, namely next to his lawyer.

17. The prosecutor objected to this motion, claiming that the law on arrested and detained persons said nothing about a defendant being released from the metal cage. Besides, the defendant was to be seated in the seat meant for him and that could not be regarded as violating his dignity. The victim's representative also objected to this motion, claiming that the applicant was a detainee, therefore he had to be kept in a metal cage. Furthermore, there were no requisite security measures in the courtroom.

18. The Court of Appeal decided to refuse this motion as unsubstantiated, finding that the placement of the defendant in the seat meant for him during the court hearings did not violate the rights invoked by the defence. The court further stated that its decision was based on security considerations.

19. During the entire proceedings before the Court of Appeal the applicant was kept in the metal cage. The proceedings lasted about two months and included at least twelve public hearings. According to the applicant, the hearings lasted on average about four hours. It appears that

they were attended by the applicant's children, wife, siblings and friends, and other members of the public.

20. At the hearing of 21 May 2004 the applicant repeated his request to call witnesses, made earlier in his written explanations. The Court of Appeal refused this request on the ground that accountant K.S. and treasurer K.M. had already been examined and made detailed statements during the investigation and the proceedings in the District Court. As to the accountant S.H., the court stated that it was unnecessary to call her in this particular case. As to K., H. and Z., the court stated that their identity was unknown.

21. On 25 May 2004 the Criminal and Military Court of Appeal upheld the applicant's sentence. The Court of Appeal only partially granted the victim's civil claim, awarding him AMD 23,063,108 and USD 119,000.

22. On 4 June 2004 the applicant lodged an appeal on points of law.

23. On 30 July 2004 the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) dismissed the appeal and upheld the applicant's conviction.

B. The applicant's state of health and the alleged lack of requisite medical assistance in detention

24. It appears that, prior to his placement in detention, the applicant suffered from a number of diseases, including acute bleeding duodenal ulcer and diabetes. It further appears that he had suffered a heart attack in 2001.

25. On 6 May 2003 the applicant was placed in Nubarashen Detention Facility (*«Նուբարաշեն» քրեակատարողական հիմնարկ*).

26. On 7 May 2003 the applicant was examined by a doctor upon his admission to the detention facility. It was noted that he suffered from ischemic heart disease, gallstones and diabetes.

27. On 20 June 2003 the applicant was examined by a surgeon of the facility's medical unit to whom he complained of pain in the epigastric region which worsened at night and improved after eating. He further complained of loss of weight and frequent vomiting. The surgeon noted that the applicant, prior to his detention, had been diagnosed with an acute bleeding duodenal ulcer and recommended to have surgery. The applicant agreed in writing to have surgery.

28. On 26 June 2003 the applicant was transferred to the Hospital for Prisoners (*«Դատապարտյալների հիվանդանոց» քրեակատարողական հիմնարկ*). According to the applicant's treatment plan, developed upon his admission, the applicant was supposed to undergo blood and urine tests, an electrocardiogram, a gastroscopy, and consultations with a cardiologist and an endocrinologist.

29. It appears from the applicant's hospital medical file that the applicant was under regular medical observation.

30. On 27 and 28 June 2003 blood and urine tests were carried out.

31. On 30 June and 4 July 2003 an endoscopy and a gastroscopy were performed. The diagnosis of an acute, bleeding duodenal ulcer was confirmed. It appears that on the latter date the applicant also underwent haemostatic treatment of the ulcer.

32. On 3 July 2003 the applicant underwent an ultrasound scan of his abdominal area and urinary organs.

33. On 7 July 2003 the applicant's gastrointestinal problems exacerbated, causing him to feel dizzy and to collapse. Medical aid was provided.

34. By a letter of 8 July 2003 the chief of the Hospital for Prisoners informed the judge examining the applicant's case that the applicant had been admitted to the hospital as an emergency case and had been diagnosed with an acute bleeding duodenal ulcer. On 4 July 2003 a gastroscopy had been performed, accompanied by haemostatic therapy. The applicant continued to receive treatment and for the time being was unfit for trial.

35. On 11 July 2003 an electrocardiogram was performed.

36. On 23 July 2003 the applicant was examined by an endocrinologist. The endocrinologist recommended an additional glycaemia test on an empty stomach in order to decide on the applicant's further treatment.

37. On 29 July 2003 the applicant was discharged from the hospital and transferred back to the detention facility. According to the relevant discharge certificate (*էպիկրիզ*) issued by the Chief of the Hospital, M.G., and the Head of the Surgical Unit, A.D.:

> "Following the relevant examination and consultations carried out in the unit, [the applicant] was diagnosed as having an ulcer, acute bleeding duodenal ulcer, diabetes (type 2, medium degree, subcompensated stage) and diabetic angiopathy, for which, apart from the relevant treatment, on 4 July 2003 [the applicant] received haemostatic therapy of the ulcer and was discharged on 29 July 2003. The patient must undergo regular medical check-ups."

38. On the same date it was noted in the applicant's medical file that he was being discharged after receiving appropriate treatment and was in satisfactory condition.

39. The Government alleged that the applicant had also undergone the recommended surgery at the hospital. The applicant contested this allegation and claimed that no surgery had been carried out.

40. On 5 August 2003 the applicant was transferred to the medical unit of the detention facility for further treatment since his state of health had deteriorated. At the medical unit, the applicant was examined by a doctor to whom he complained of, *inter alia*, pain in his chest, dry mouth, asthenia, headache, dizziness and occasional vomiting. Blood and urine tests were carried out.

41. From 11 to 29 August 2003, according to the records made in his medical file, the applicant was under regular medical observation and received medication. Regular check-ups were performed once every two to

three days. His state of health during this period was recorded as fluctuating between stable and deteriorated.

42. On 14 August 2003 an ambulance was called to the courtroom since the applicant's heart condition worsened. He was examined by a cardiologist and diagnosed with ischemic heart disease, post-infarction cardiosclerosis and rest stenocardia. An electrocardiogram was prescribed as well as medication including validol, analgin and dimedrol.

43. On 22 August 2003 an ambulance was called to the courtroom for the same reasons. The applicant's heart diagnosis was confirmed and in-patient examination and treatment were recommended.

44. By a letter of 22 August 2003 the examining judge informed the chief of the detention facility about the events of 14 and 22 August 2003 and inquired about the applicant's state of health and whether he was receiving requisite medical assistance.

45. By a letter of 28 August 2003 the chief of the detention facility informed the judge that the applicant was suffering from ischemic heart disease, exertion and rest stenocardia, post-infarction cardiosclerosis, diabetes, diabetic angiopathy and bleeding duodenal ulcer. The letter further stated that the applicant was under constant medical observation and was receiving treatment.

46. On 9 September 2003 the applicant's counsel applied to the Head of the Criminal Corrections Department of the Ministry of Justice (*ՀՀ արդարադատության նախարարության քրեակատարողական վարչության պետ*), stating that the applicant's state of health required regular medical check-ups and requesting his transfer to the Hospital for Prisoners for treatment. It appears that no reply to this complaint was received

47. On 13 October 2003 the applicant was transferred from the medical unit back to his cell.

48. The applicant alleged that from the date of his transfer to his cell in the detention facility until his transfer to a correctional facility on 13 August 2004 he was never examined by a doctor. He had verbally applied on numerous occasions to the administration of the detention facility requesting medical assistance, but no such assistance or medication had been provided, nor any special diet prescribed. The necessary medicines and food products were provided by his relatives on a regular basis.

49. The Government confirmed that the applicant had verbally applied to the administration of the detention facility for medical assistance within the above-mentioned period, but alleged that such assistance had been provided to the applicant on each and every occasion, including necessary medicines and diet. He was regularly checked by a doctor and, if any symptoms were disclosed, he promptly received the necessary treatment. The detention facility was staffed with the following specialists: two physicians, one psychiatrist-neurologist, one dermatologist, one dentist, one

tuberculosis specialist, one laboratory assistant and six doctors' assistants. The latter visited the detainees every day to check their health and the doctors were immediately alerted if there were any problems.

50. In support of this allegation the Government submitted a statement made on 27 June 2006 by the Principal Specialist of the Medical Assistance Unit of the Criminal Corrections Department of the Ministry of Justice, A.H. According to this statement, between October 2003 and August 2004 the applicant had regularly applied to the medical staff of the detention facility and had received medical consultations and out-patient treatment for ischemic heart disease, exertion and rest stenocardia, diabetes and duodenal ulcer. Medication was prescribed, including solution of analgin, papaverin, dibazol, phurosemid, validol, ranitidine, nitrong and diabeton, which the detention facility received on a quarterly basis from the Hospital for Prisoners.

51. On 18 December 2003 the applicant underwent an ultrasound scan of his abdominal area by an outside doctor invited by his relatives.

52. On 9 February 2004, as it appears from the relevant certificate, the applicant was found to be fit for work after being examined by a doctor.

53. The court hearing scheduled for 13 April 2004 was adjourned because of the applicant's poor health.

54. On 17 June 2004 the applicant's counsel applied to the Chief of Nubarashen Detention Facility, complaining that it was dangerous for the applicant, in view of his health, to be kept in a common cell. He further complained that, in spite of this, the applicant had recently been transferred to another cell where conditions were even worse. Counsel requested that the applicant be urgently transferred to a hospital for treatment.

55. On 17 July 2004 the applicant's counsel applied to the Head of the Criminal Corrections Department of the Ministry of Justice, complaining that, notwithstanding the applicant's state of health, he was kept in a common cell. He further complained that the Chief of Nubarashen Detention Facility had failed to transfer the applicant to a hospital and to provide treatment.

56. On 27 July 2004 at 1.20 a.m. an ambulance was called to the detention facility because the applicant suffered a heart attack.

57. On 28 July 2004 the applicant's counsel lodged a similar complaint to that of 17 July 2004, with a copy to the Chief of Nubarashen Detention Facility.

58. By a letter of 29 July 2004 the Head of the Criminal Corrections Department replied to counsel's complaint of 17 July 2004, stating that the applicant had already been hospitalised twice for treatment from 26 June to 29 July 2003 and from 5 August to 13 October 2003. The letter further stated that the applicant was currently under observation by the medical staff and his state of health was satisfactory.

59. On 11 and 12 August 2004 the applicant's counsel lodged two complaints with the Head of the Criminal Corrections Department and with the Minister of Justice, with a copy to the Chief of Nubarashen Detention Facility, claiming that the applicant's state of health was deteriorating daily, but no measures were being taken. He submitted that the applicant's illnesses required a special diet, regular medical check-ups and medication. In spite of this, the applicant was kept in conditions where none of this was available.

60. By a letter of 13 August 2004 the Head of the Criminal Corrections Department replied to the counsel's complaint of 28 July 2004, stating that the letter of 29 July 2004 had already answered the issues raised.

61. On 13 August 2004, after his conviction was upheld in the final instance, the applicant was transferred to Kosh correctional facility to serve his sentence.

62. On 14 August 2004 the applicant was examined by a doctor upon his admission to the correctional facility. He complained of asthenia, dizziness and of pain in his epigastric area and the left part of his back. His general state of health was found to be satisfactory. Medication was prescribed.

63. By a letter of 20 August 2004 the Head of the Criminal Corrections Department replied to the counsel's complaint of 12 August 2004, stating that the applicant had more than once received treatment in various facilities and that he was currently serving his sentence at Kosh correctional facility where his state of health was found to be satisfactory.

C. Further developments

64. On 29 December 2006 the Aragatsotn Regional Court (*Արագածոտն մարզի առաջին ատյանի դատարան*) dismissed the applicant's request to be released on parole, finding that he was not entitled under the law to lodge such a request directly with the courts without the prior approval by the parole board.

65. On an unspecified date the applicant lodged an appeal.

66. On 14 March 2007 the Criminal and Military Court of Appeal reviewed the decision of the Regional Court and decided to examine and grant the applicant's request for release in view of his good behaviour.

67. This decision, though subject to appeal on points of law, was immediately enforceable, so the applicant was released from prison.

68. On 1 June 2007 the Court of Cassation quashed the decision of the Court of Appeal upon the prosecutor's appeal and decided to terminate the proceedings on the same ground as the Regional Court.

69. The applicant was taken back to prison.

70. On 20 January 2009 the applicant died in prison from a heart attack.

II. RELEVANT DOMESTIC LAW

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

71. According to Section 13, a detainee has the right, *inter alia*, to healthcare, including to receive sufficient food and urgent medical assistance.

72. According to Section 21, the administration of a detention facility shall ensure the sanitary, hygienic and anti-epidemic conditions necessary for the preservation of health of detainees. At least one general practitioner shall work at the detention facility. A detainee in need of specialised medical assistance must be transferred to a specialised or civilian medical institution.

B. The Code of Criminal Procedure

1. Presumption of innocence

73. According to Article 18, the suspect or the accused shall be considered innocent until his guilt is proved by a final court verdict in accordance with the procedure prescribed by this Code.

2. Calling of witnesses

74. According to Article 23 § 3, the court does not side with the prosecution or the defence and acts only in the interests of the law.

75. According to Article 65 § 2 (12), the accused has the right to file motions.

76. According to Article 102 § 2, motions and requests must be examined and ruled upon immediately after being filed.

77. According to Article 271 § 1, a list of persons subject to be called to court shall be annexed to the indictment. The investigator must indicate in the list the location of these persons and the pages of the case file which contain their statements or conclusions.

78. According to Article 277 § 1, the prosecutor, by approving the indictment, shall transmit the case to the competent court.

79. According to Article 292, the judge who has taken over the criminal case shall study the materials of the case and within fifteen days after taking over the case shall adopt, *inter alia*, a decision to set the case down for trial.

80. According to Article 293 § 2, the decision to set the case down for trial must contain, *inter alia*, the list of persons subject to be called to court.

81. According to Article 331 §§ 1 and 2, in the preparatory stage of the trial, the presiding judge shall inquire whether the prosecution and the defence want to file motions seeking to obtain new evidence and to include it in the case file. The court must examine each motion filed and hear the parties. The court shall grant the motion, if the circumstances which it seeks to disclose may be significant for the case. A decision refusing a motion must be reasoned.

82. According to Article 391 § 5, the parties are entitled to file motions in the court of appeal seeking to call new witnesses.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. The 3rd General Report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT) – CPT/Inf(93)12

83. The relevant extracts from the Reports read as follows:

"**a. Access to a doctor**

... 34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime... The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay. ...

35. A prison's health care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds). ... Further, prison doctors should be able to call upon the services of specialists. ...

Out-patient treatment should be supervised, as appropriate, by health care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.

36. The direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital. ...

37. Whenever prisoners need to be hospitalised or examined by a specialist in a hospital, they should be transported with the promptness and in the manner required by their state of health.

b. Equivalence of care

i) general medicine

38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the

outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.).

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise.

40. The smooth operation of a health care service presupposes that doctors and nursing staff are able to meet regularly and to form a working team under the authority of a senior doctor in charge of the service."

B. The Report of the CPT on its Visit to Armenia in 2002 – CPT/Inf(2004)25

84. The relevant extracts from the Report read as follows:

"**b. health care services in the prisons visited [(four establishments, including Nubarashen Prison)]**

i. staff and facilities

106. At **Nubarashen Prison**, the full-time health care team consisted of 7 doctors (head doctor, internist, surgeon, stomatologist, dermato-venerologist, radiologist, psychiatrist), 5 feldshers, a laboratory assistant, an X-ray technician and a dental technician. Assistance was provided by several prisoner orderlies.

...

At Nubarashen Prison, the presence of a feldsher was ensured on a 24-hour basis. ...

107. As regards the complement in terms of doctors, the situation at Nubarashen ... [Prison] can be considered satisfactory. ...

...

108. The CPT is particularly concerned about the low number of qualified feldshers and the total lack of qualified nurses at the four establishments. Given the size and structure of the respective inmate populations (with rapid inmate turnover at the two pre-trial facilities and noticeable proportions of older prisoners at the two colonies), **the CPT recommends that the nursing staff resources (i.e. feldshers and nurses) at the four establishments be increased.**

The CPT also wishes to stress that a person competent to provide first aid, preferably with a recognised nursing qualification, should always be present on prison premises, including at night and weekends.

109. In the CPT's view, the employment of inmates as orderlies should be seen as a last resort, and prisoners should under no circumstances be involved in the distribution of medicines. Further, such persons should not be given access to medical files, nor should they be present during medical examinations. **The Committee recommends that the position of the prisoners working as orderlies at Nubarashen ... [Prison] (as well as other penal establishments in Armenia) be reviewed, in the light of these considerations**.

110. The delegation heard very few complaints about access to the doctor (or, as in Gyumri, to the feldsher). However, at the four prisons, inmates complained about the standard of treatment and care, in particular as regards the range of medication prescribed and the quality of dental care (which appeared to be limited to extractions). At each of the establishments, the transfer of inmates to the Hospital for Prisoners in Yerevan, when required by their state of health, was said to be unproblematic. ...

...

113. The supply of basic medication and related materials was grossly insufficient at each of the establishments. This was hardly surprising, given the very limited budget for acquiring such items. In this regard, the health-care services concerned depended to a considerable extent on donations and inmates' own resources.

Reference has already been made to the State's duty of care vis-à-vis persons deprived of their liberty, even in periods of serious economic difficulties ... **The CPT recommends that the Armenian authorities take measures without delay to ensure the supply of appropriate medicines and related materials to the prisons visited and, if necessary, to other penitentiary establishments in Armenia**."

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE THE CASE OUT OF THE LIST

85. The Government submitted that the applicant's daughter, Ms Arusyak Harutyunyan, had no legitimate interest in pursuing the application lodged by her late father and requested that the application be struck off the list.

86. The Court points out that on numerous occasions it has accepted that the parents, spouse or children of a deceased applicant are entitled to take his place in the proceedings, if they express their wish to do so (see, for example, *Deweer v. Belgium*, 27 February 1980, §§ 37-38, Series A no. 35; *X v. the United Kingdom*, 5 November 1981, § 32, Series A no. 46;

Vocaturo v. Italy, 24 May 1991, § 2, Series A no. 206-C; *G. v. Italy*, 27 February 1992, § 2, Series A no. 228-F; *Pandolfelli and Palumbo v. Italy*, 27 February 1992, § 2, Series A no. 231-B; *X v. France*, 31 March 1992, § 26, Series A no. 234-C; *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A; and *Dalban v. Romania* [GC], no. 28114/95, §§ 38-39, ECHR 1999-VI). The Government did not raise any specific arguments in support of their request. The Court does not see any special circumstances in the present case to depart from its established case-law.

87. Consequently, the Government's request for the case to be struck out should be dismissed. The Court holds that Ms Arusyak Harutyunyan has standing to continue the present proceedings in the applicant's place.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

88. The applicant complained that he had not received requisite medical assistance during his stay at the detention facility from 6 May 2003 to 13 August 2004. The applicant also complained about being placed in a metal cage during the appeal proceedings. He invoked 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. Alleged lack of requisite medical assistance in detention

1. The parties' submissions

(a) The Government

89. The Government argued that the medical assistance provided to the applicant at Nubarashen Detention Facility was in compliance with the CPT standards. The applicant indeed suffered from several chronic diseases such as duodenal ulcer, gastritis, diabetes and also heart problems. This was noted at the time of the applicant's admission to the detention facility and he was placed under adequate supervision and care. The healthcare service at the detention facility had sufficient specialised staff and the applicant had access to a doctor at any time. The medical assistance was provided to him on the initiative of the medical staff and did not depend on the discretion of the investigating authority, unlike the case of *Khudobin v. Russia* (no. 59696/00, § 86, ECHR 2006-XII (extracts)). Whenever any symptoms appeared, the applicant was promptly examined and received out-patient treatment, including consultations and prescription of medicine when necessary. All this was duly recorded in the medical files.

90. Furthermore, the applicant was twice transferred for in-patient treatment at the prisoners' hospital and the detention facility's medical unit, where he underwent numerous examinations and treatment. At the hospital the applicant underwent several ultrasound scans of his abdominal area and had blood and urine tests and an electrocardiogram. At the medical unit he once again underwent examinations. On both occasions the applicant received medical care and treatment through medication and was discharged after his state of health sufficiently improved and stabilised.

91. Referring to the events of 7 July and 14 and 22 August 2003 and 27 July 2004, the Government claimed that the applicant was provided with immediate medical aid whenever he had health problems. Furthermore, his state of health and the adequacy of the medical treatment received by him were under the supervision of the court, as can be seen from the judge's letter of 22 August 2003.

92. The Government also claimed that the applicant had failed to submit any proof that the alleged lack of requisite medical assistance caused him mental or physical suffering, diminishing his human dignity, or that during the contested period his state of health deteriorated. There was no reason for anxiety on his part since the presence of a medical assistant was ensured at the detention facility on a 24-hour basis. Furthermore, the authorities did not place any restrictions on the parcels and medicine brought by the applicant's relatives and also allowed them to invite an outside doctor, which they did on 18 December 2003.

93. The Government finally claimed that the authorities had no intention to humiliate the applicant, since he was kept in normal prison conditions and was transferred to a hospital each time he was feeling unwell, and was kept there until his health improved. With reference to the CPT Report on its 2002 periodic visit to Armenia, the Government claimed that in general the performance of the health-care service at Nubarashen Detention Facility, which was adequately staffed, was satisfactory.

(b) The applicant

94. The applicant submitted at the outset that he was not adequately examined upon his admission to the detention facility, since not all of his diseases were duly noted, including the duodenal ulcer. He further admitted that he enjoyed “access to a doctor” in the sense of being able to complain about his health problems to the medical staff, but argued that no medical assistance was provided as a result of such complaints.

95. The applicant further argued that the relevant medical recommendations did not receive a proper follow-up. Firstly, no operation was carried out despite the doctor's recommendation of 20 June 2003. Secondly, no medical assistance was provided to him between September 2003 and August 2004, including regular medical check-ups and prescription and provision of medication and of a special diet. Apart from

the treatment received at the hospital and the medical unit and the two examinations which he underwent on 7 May and 20 June 2003, his medical files do not contain any records. Within that period he and his lawyer complained both verbally and in writing to various authorities about his poor state of health, but these complaints remained unanswered.

96. The applicant further submitted that he was not complaining about the two periods when he received in-patient treatment, but about the fact that throughout the remaining period he was kept in a common cell and was not provided with the medical assistance he needed and asked for. The failure to provide him with the medical care that his poor state of health required caused him immense mental and physical suffering, which eventually led to the abrupt deterioration of his health and his suffering a heart attack.

97. As regards the examining judge's letter of 22 August 2003, the applicant alleged that the main purpose of this inquiry was to find out whether he was fit for trial. In any event, this inquiry did not produce any positive results. Furthermore, the fact that, instead of taking any steps to ensure his adequate treatment, the administration of the detention facility decided in June 2004 to transfer him to a cell where conditions were even worse, suggested that they had the intention to humiliate him.

98. The applicant finally claimed that the fact that the authorities did not create any obstacles for his relatives to invite an outside doctor did not absolve them from their obligation to provide him with requisite medical assistance. Nor did the Government's reference to the allegedly satisfactory performance of the detention facility's healthcare service in general.

2. The Court's assessment

(a) Admissibility

99. The Court notes at the outset that the applicant raised his complaint about the allegedly poor conditions of his cell at Nubarashen Detention Facility for the first time in his observations filed on 5 May 2007. However, the applicant's detention in that facility ended on 13 August 2004, which is more than six months before the date of introduction of this complaint (see, for example, *Polufakin and Chernyshev v. Russia*, no. 30997/02, § 146, 25 September 2008). It follows that this complaint was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

100. As to the complaint concerning the alleged failure to provide the applicant with requisite medical assistance in that facility, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

(i) General principles

101. 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).

102. 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). Although the question of whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III)

103. 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)).

104. The Court has also emphasised the right of all prisoners to conditions of detention which are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

(ii) Application of these principles in the present case

105. The Court notes at the outset that it is undisputed that the applicant suffered from a number of serious illnesses, including acute bleeding duodenal ulcer, diabetes, diabetic angiopathy and a heart condition. At the

time of his admission to the detention facility, however, only the applicant's ischemic heart disease and diabetes were noted, but no record was made of his acute bleeding duodenal ulcer or diabetic angiopathy.

106. In any event, on 20 June 2003 – about a month and a half after he was placed in detention – the applicant was examined by a surgeon, during which it was noted that the applicant also suffered from acute bleeding duodenal ulcer and surgery was recommended (see paragraph 27 above). Following this recommendation, on 26 June 2003, the applicant was transferred to a hospital for prisoners. The parties disagreed as to whether this recommendation received an adequate follow-up (see paragraph 39 above).

107. The Court observes, however, that the Government's allegation that surgery had actually been performed on the applicant is not supported by the materials of the case. In particular, both the applicant's hospital medical file and the discharge certificate of 29 July 2003 said nothing about any surgery having been carried out in respect of the applicant. It is hard to imagine that such a vital piece of information would have been omitted from those documents. The Court is therefore not convinced by the Government's allegation and concludes that the doctor's recommendation of 20 June 2003, which could potentially have improved the applicant's state of health, was not followed up and this without any valid reasons.

108. The Court notes, on the other hand, that the authorities made certain efforts to meet the applicant's health needs by hospitalising him on two occasions. The applicant also admitted this fact, adding that he had no specific grievances in respect of the treatment received during those periods. The Court, however, agrees with the applicant that nothing suggests that these efforts had, as alleged by the Government, a stabilising effect on his health.

109. In particular, as regards the applicant's stay at the hospital for prisoners between 26 June and 29 July 2003, it is true that some treatment, including haemostatic therapy of ulcer, was given. It is also true that, while the applicant's discharge certificate of 29 July 2003 was silent on any improvement in his state of health, it was, nevertheless, noted in his medical file that he was being discharged in satisfactory condition. However, only a few days after his discharge from the hospital the applicant was once again hospitalised – this time at the medical unit of the detention facility – since his state of health deteriorated (see paragraph 40 above). Furthermore, the above discharge certificate explicitly stated that the applicant had to undergo regular medical check-ups. This suggests that the applicant's treatment, even if possibly useful, nevertheless cannot be said to have been successful to the extent that it made any further medical supervision unnecessary.

110. As regards the treatment received by the applicant at the medical unit of the detention facility, the Court points out that the applicant was

transferred there on 5 August 2003 and was under regular observation from 11 to 29 August 2003. However, his medical file does not contain any further records. It is notable that soon after the records stopped, namely on 9 September 2003, the applicant's lawyer applied to the authorities with a request that the applicant be provided with regular medical check-ups, which remained unanswered (see paragraph 46 above). It therefore appears that no observation and treatment at all were carried out between 29 August and 13 October 2003, that is the date when the applicant was transferred back to his cell. Nor, in such circumstances, is it clear what the outcome of the applicant's treatment at the medical unit was.

111. All the above evidence and circumstances suggest that the applicant was in need of regular medical check-ups and assistance. The parties disagreed as to whether this need was actually met. The applicant alleged that no medical assistance was provided to him during his detention apart from the two periods when he was under medical supervision. The Government admitted that the applicant had applied verbally for medical assistance during the disputed period, but alleged that such assistance was provided to him on each and every occasion, including regular medical check-ups (see paragraph 49 above).

112. The Court notes, however, that the applicant's medical file does not contain a single record of any medical check-up or assistance provided to him between 29 August 2003 and 13 August 2004 by the medical staff of the detention facility. It therefore does not find the Government's allegation to be convincing. The Court further notes that the discharge certificate of 29 July 2003, which explicitly required that the applicant undergo regular medical check-ups, did not make such check-ups dependent on the applicant's initiative. The detention facility's medical staff therefore had the duty to carry out such check-ups irrespective of whether the applicant himself asked for this. It is clear that the applicant was in need of such regular medical care which was, however, denied to him during the said period. The Government's argument that the medical unit of the detention facility was sufficiently staffed is therefore irrelevant, given that no regular medical care was provided specifically to the applicant.

113. As regards the Government's argument that the applicant was not subjected to any mental or physical suffering as a result of the alleged lack of requisite medical assistance, the Court notes at the outset that the applicant did experience an emergency situation on account of his heart condition when he suffered a heart attack on 27 July 2004 (see paragraph 56 above). It is not for the Court to speculate whether the heart attack suffered by the applicant was a direct consequence of the failure to provide him with regular medical care. However, the Court finds it especially worrying that the applicant's heart attack coincided with the several unsuccessful attempts made by his counsel to draw the attention of the authorities to the applicant's need for medical care (see paragraphs 54 and 55 above).

114. It is true that there is no material before the Court to suggest that the applicant had any medical emergency or was exposed to severe or prolonged pain during the period in question on account of his other illnesses, including the acute bleeding duodenal ulcer and the diabetes. The Court points out, however, that where complaints are made about a failure to provide requisite medical assistance in detention, it is not indispensable for such a failure to lead to any medical emergency or otherwise cause severe or prolonged pain in order to find that a detainee was subjected to treatment incompatible with the guarantees of Article 3. The fact that a detainee needed and requested such assistance but it was unavailable to him may, in certain circumstances, suffice to reach a conclusion that such treatment was degrading within the meaning of that Article (see *Sarban*, cited above, §§ 86-87 and 90).

115. Thus, as already indicated above, the applicant was clearly in need of regular medical care and supervision, which was, however, denied to him over a prolonged period of time. All the complaints in this respect lodged by the applicant's counsel either remained unanswered (see paragraph 46 above) or simply received formal replies (see paragraphs 58, 60 and 63 above). The applicant's verbal requests for medical assistance were also to no avail. In the Court's opinion, this must have given rise to considerable anxiety and distress on the part of the applicant, who clearly suffered from the effects of his medical condition, which went beyond the unavoidable level of suffering inherent in detention.

116. There has accordingly been a violation of Article 3 of the Convention.

B. The applicant's placement in a metal cage during the appeal proceedings

1. The parties' submissions

117. The Government, relying on the judgment in the case of *Sarban* (cited above, §§ 88-90), submitted that placement of a person in a metal cage during court proceedings could be viewed only as a factor contributing to a finding of a violation of Article 3, but in itself not sufficient to reach such a finding. In that case, as opposed to the present one, there were other factors which led the Court to make such a finding, including the high publicity of the case and the applicant being publicly handcuffed and having his blood pressure measured through the bars of the cage in front of the public. While in that case the security measures in question were unjustified, in the present case the Court of Appeal gave detailed reasons for the necessity to keep the applicant in the cage, which included risks to security and the victim's fear.

118. Furthermore, the cage where the applicant was placed was considered as the seat intended for the defendant. There was therefore no intention to humiliate the applicant or reasons for him to feel humiliated in his own eyes. The Government finally submitted that the phenomenon of metal cages in courtrooms was inherited from the Soviet system and such cages had been removed following the circumstances of the present case as a result of reforms.

119. The applicant claimed that the treatment in question exceeded the minimum level of severity required by Article 3. During the entire appeal proceedings, which included twelve court hearings each lasting about four hours, he was kept in a metal cage, which violated his dignity and made him feel inferior. His children, wife, sister, brother and friends were present and saw him in such a state, and seeing the pain of his relatives aggravated his own suffering. He also felt humiliated in the eyes of his adversaries. In particular, when his lawyer requested the court to release him from the cage the court, before deciding on this matter, asked for the opinion of the prosecutor and the victim's representative.

120. Furthermore, the Government's reference to security considerations was unfounded. In particular, during the entire proceedings at first instance he was not kept in a cage and there was not a single incident recorded between him and the victim. Besides, he was placed in the cage automatically and not upon the victim's request, since this was a measure applied in the Court of Appeal to all defendants who had been placed in detention. The Court of Appeal failed to provide reasons for its decision to keep him in the cage. Moreover, during the entire time he was accompanied by armed servicemen and there was no need to keep him in the cage.

121. The applicant finally claimed that, by introducing reforms, the Government accepted that cages did not correspond to international standards. The removal of the cages also showed that they were in general not necessary to ensure security. Besides, the Government's statement was not entirely true since cages still remained in some courtrooms outside Yerevan.

2. The Court's assessment

(a) Admissibility

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

(b) Merits

123. The Court reiterates the basic principles established in its case-law concerning the prohibition of ill-treatment under Article 3 (see paragraph 101 and 102 above). It further observes that treatment has been held by the Court to be "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In order for a punishment or treatment associated with it to be "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

124. The Court further reiterates that a measure of restraint does not normally give rise to an issue under Article 3 of the Convention where this measure has been imposed in connection with a lawful detention and does not entail a use of force, or public exposure, exceeding that which is reasonably considered necessary. In this regard it is important to consider, for instance, whether there is a danger that the person concerned might abscond or cause injury or damage (see, among many authorities, *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII, and *Öcalan v. Turkey* [GC], no. 46221/99, § 182, ECHR 2005-IV).

125. Thus, a violation of Article 3 was found in a case where the applicants, publicly known figures, were placed during a hearing on their detention, which was broadcast live throughout the country, in a barred dock resembling a metal cage and were guarded by special forces wearing black hood-like masks, despite the fact that there was no risk that the applicants might abscond or resort to violence during their transfer to the courthouse or at the hearings (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 98-102, 27 January 2009). Furthermore, a violation of Article 3 was found in a case where the applicant, who was not a public figure, was unjustifiably handcuffed during public hearings (see *Gorodnichev v. Russia*, no. 52058/99, §§ 105-109, 24 May 2007). Unjustified placement of an applicant in a cage during public hearings was also considered a factor contributing to a finding of a violation of Article 3 (see *Sarban*, cited above, §§ 88-90). However, even in the absence of publicity, a given treatment may still be degrading if the victim could be humiliated in his or her own eyes, even if not in the eyes of others (see *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26; and *Ramishvili and Kokhreidze*, cited above, §§ 97 and 100). Thus, application of measures of restraint to an applicant in a private setting still gave rise to a violation of Article 3 in a situation where no serious risks to security could be proved to exist (see *Henaf v. France*, no. 65436/01, §§ 51 and 56, ECHR 2003-XI).

126. Turning to the circumstances of the present case, the Court notes that the applicant was kept in a metal cage measuring around 3 sq. m during the entire proceedings before the Court of Appeal. The Court does not share the Government's view that this measure was justified by security considerations. Nor is there any material in the case file to support the Government's position. In particular, contrary to what the Government claim, no specific reasons were given by the Court of Appeal in justifying the necessity of keeping the applicant in the metal cage. Indeed, in refusing the applicant's relevant motion, the Court of Appeal simply made a general reference to security considerations, without providing any detailed reasons as to why the applicant's release from the metal cage would endanger security in the courtroom.

127. The Court notes that nothing in the applicant's behaviour or personality could have justified such a security measure. During the entire proceedings before the District Court, where no security measures were applied to him, the applicant showed orderly behaviour and no incidents were recorded. Moreover, the applicant had no previous convictions or any record of violent behaviour and was accused of a non-violent crime. Furthermore, it can be inferred from the statements of the prosecutor and the Court of Appeal that the metal cage in the Court of Appeal's courtroom was a permanent installation which served as a dock and that the applicant's placement in it was not necessitated by any real risk of his absconding or resorting to violence but by the simple fact that it was the seat where he, as a defendant in a criminal case, was meant to be seated (see paragraphs 17 and 18 above).

128. The Court observes that the proceedings before the Court of Appeal lasted from March to May 2004 and at least twelve public hearings were held. The applicant alleged, which the Government did not dispute, that the hearings lasted on average about four hours. During this period the applicant was observed by the public, including his family and friends, in a metal cage. The Court considers that such a harsh appearance of judicial proceedings could lead an average observer to believe that an extremely dangerous criminal was on trial. Furthermore, it agrees with the applicant that such a form of public exposure humiliated him in his own eyes, if not in those of the public, and aroused in him feelings of inferiority. Moreover, such humiliating treatment could easily have had an impact on the applicant's powers of concentration and mental alertness during the proceedings bearing on such an important issue as his criminal liability (see, *mutatis mutandis*, *Ramishvili and Kokhreidze*, cited above, § 100).

129. In the light of the above considerations, the Court concludes that the imposition of such a stringent and humiliating measure on the applicant during the proceedings before the Court of Appeal, which was not justified by any real security risks, amounted to degrading treatment. There has accordingly been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION

130. The applicant complained that the principles of equality of arms and of the presumption of innocence were violated by his placement in a metal cage during the appeal proceedings. He invoked Article 6 §§ 1 and 2 of the Convention, which in so far as relevant, provides:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... by [a] ... tribunal. ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The Government

132. The Government submitted that Article 6 § 1 spoke about the possibility to participate effectively in a trial and not about the feelings that a person may experience. The applicant's placement in the cage did not in itself violate the principle of equality of arms. The applicant failed to mention any circumstance showing that he was placed in an unequal position vis-à-vis his opponents. In reality he was able to participate effectively in the trial, to submit evidence, to call and examine witnesses, to examine the witnesses against him, to file motions and to communicate without any restrictions with his two lawyers, who were not placed in a cage. In support of their submissions, the Government referred to the case of *Auguste v. France* (no. 11837/85, Commission Report of 7 June 1990, Decisions and Reports 69, p. 104).

133. The Government further submitted that the applicant's placement in a metal cage did not in itself violate the principle of the presumption of innocence. Nor did it suggest that the Court of Appeal or the parties and other participants in the proceedings had a preconceived idea about the applicant's guilt or regarded him as a criminal.

(b) The applicant

134. The applicant submitted that the principle of equality of arms guaranteed by Article 6 § 1 was violated. In particular, his degrading state and continuous emotional suffering and feeling of shame caused by his placement in the cage before the eyes of the public did not allow him to focus on anything else, suppressed his will and essentially limited his ability to resist. Thus, he was deprived of the possibility to participate effectively in the trial. This was especially important since the Court of Appeal conducted a full examination of the case. The fact that he had a lawyer was not decisive, because he personally had to give evidence, including answering questions from the parties and the court. Furthermore, he did not feel himself to be an equal adversary in his own eyes and from the very beginning of the trial he felt that he was a lost party, especially since the Court of Appeal refused to release him from the cage. His procedural adversaries also felt superior to him.

135. The applicant further claimed that the principle of presumption of innocence protected a person's right not to be considered a criminal in the eyes of the public until his guilt had been proved. The Court of Appeal should have refrained from any actions which could give the public the impression that he was guilty. However, the Court of Appeal decided to keep him in a metal cage, in spite of the fact that this could actually create such an impression, since persons kept in the cage were commonly identified with serious criminals.

2. The Court's assessment

136. The Court reiterates that the principles of equality of arms and of the presumption of innocence are specific elements of the wider concept of a fair trial in criminal proceedings (see *Ekbatani v. Sweden*, 26 May 1988, § 30, Series A no. 134, and *Deweer v. Belgium*, 27 February 1980, § 56, Series A no. 35). The former principle implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274), while the latter principle will be violated if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty (see *Minelli v. Switzerland*, 25 March 1983, §§ 27 and 37, Series A no. 62).

137. The Court notes that, in a case concerning the appearance of an accused before a criminal court in a “glass cage”, no violation of the right to a fair trial or of the presumption of innocence was found by the

Commission. In that case the Commission noted that this was a permanent security measure used for other criminal cases, that the accused was able to communicate confidentially with his lawyer, that he was able to communicate with the court and that he was not in an unfavourable position in relation to the prosecution or the jury (see *Auguste*, cited above). The Commission came to a similar conclusion in a case where an accused appeared before the court on a stretcher (see *Meerbrey v. Germany* (dec.), no. 37998/97, Commission Decision of 12 January 1998, unreported).

138. In the present case, the Court admits that, as already indicated above, the applicant's placement in a metal cage could have had an impact on his powers of concentration and mental alertness. It notes, however, that the applicant benefited from the assistance of two lawyers. Nothing suggests that the applicant's placement in a metal cage made it impossible for him to communicate confidentially and freely with his lawyers or to communicate freely with the court. The applicant himself did not make such allegations either. The applicant was therefore able to defend his case effectively and it cannot be said that the security measure in question placed him at a substantial disadvantage vis-à-vis the prosecution or the civil plaintiff. Furthermore, as already indicated above, the metal cage was a permanent security measure used for all criminal cases examined in the Criminal and Military Court of Appeal. Therefore, the imposition of this measure does not suggest that the Court of Appeal regarded the applicant as guilty.

139. The Court undoubtedly disapproves the use of such an indiscriminate and humiliating security measure in respect of the applicant, which it has found to be unacceptable in the light of the requirements of Article 3 of the Convention. Nevertheless, it cannot be said that the principles of equality of arms or of the presumption of innocence as guaranteed by Article 6 §§ 1 and 2 of the Convention were violated.

140. Accordingly, there has been no violation of Article 6 §§ 1 and 2 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 3 (d) OF THE CONVENTION

141. The applicant complained that the law failed to ensure equality between the parties in the matter of calling witnesses since, according to Article 271 of the Code of Criminal Procedure ("CCP"), the prosecution was free to choose the witnesses it wished to call without any prior leave by the court, while the defence was obliged to seek such leave. The applicant further complained that the Court of Appeal rejected his request to call witnesses K.S. and S.H. He invoked Article 6 § 3 (d) of the Convention, which in so far as relevant, provides:

> "3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) ... to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

Admissibility

1. Equality under the law

(a) The parties' submissions

142. The Government submitted that the applicant's interpretation of the relevant provisions of the CCP was erroneous. In reality, the prosecution did not enjoy any advantage in the disputed matter. In particular, Article 271 § 1 of the CCP did not impose an obligation on the courts to call all the witnesses on the prosecution's list. Furthermore, it was not true that only the attendance of witnesses proposed by the defence but not the prosecution required the court's leave: both the indictment and motions filed during the proceedings were to be examined by the courts pursuant to the procedure prescribed by Articles 102, 331 and 391 of the CCP and the courts were free to decide whether or not to call a particular witness.

143. The applicant submitted that there was no equality guaranteed under the law between the parties in the matter of calling witnesses. In particular, Article 271 § 1 of the CCP obliged the courts to summon all the persons mentioned in the prosecution's list of witnesses which was annexed to the indictment. The prosecutor did not have to file a motion seeking leave to call these persons and the question of whether they had to be called was not a matter of consideration by the court. On the other hand, if the defence wanted to call witnesses, it had to seek the court's leave, which put the defence on an unequal footing with the prosecution. Article 331 of the CCP invoked by the Government spoke about “new” evidence and it was true that, as far as the calling of “additional” witnesses was concerned, the domestic law created equal opportunities for both parties. However, as far as the evidence gathered during the investigation was concerned, including the testimonies of witnesses mentioned in the annex to the indictment, this evidence was subject to examination in court by all means. There has never been a single case in which the courts considered the matter of calling or not calling the persons indicated in the prosecution's list.

(b) The Court's assessment

144. The Court reiterates that Article 6 § 3 (d) does not require the attendance and examination of every witness on the accused's behalf. Its essential aim, as indicated by the words “under the same conditions”, is a

full "equality of arms" in the matter (see *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22; *Bönisch v. Austria*, 6 May 1985, § 32, Series A no. 92; and *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B).

145. In the present case, the applicant argued that the prosecution was, by virtue of the law, in a more advantageous position because it was entitled to submit a list of witnesses whom the courts were obliged to call, while the defence on each and every occasion had to ask for the court's leave.

146. The Court observes that, pursuant to Article 271 § 1 of the CCP, the prosecution is entitled to submit to the court a list of persons subject to be called to court, which features as an annex to the indictment. This list includes the persons who were questioned as witnesses during the investigation in connection with the criminal proceedings. It is true that Article 271 § 1 literally states "a list of persons *subject to be called* to court" (emphasis added). However, this does not imply that the courts are obliged to call all the witnesses on that list. Nor is there any other provision in the CCP which would impose such an obligation on the courts.

147. Furthermore, contrary to what the applicant claims, the court does consider the question of whether or not to call the witnesses on the prosecution's list when, pursuant to Article 293 § 2 of the CCP, it decides to set the case down for trial. Thus, it cannot be said that all the witnesses on the prosecution's list are automatically called to court. This question lies within the court's discretion, as does the question of calling witnesses on behalf of the defence. In such circumstances, the Court concludes that the Armenian criminal procedure law in itself does not fail to ensure equality between the prosecution and the defence in the matter of calling witnesses.

148. 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.

2. The refusal to call witnesses K.S. and S.H.

149. The Court reiterates that, as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. More specifically, Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system (see *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V). The national courts enjoy a margin of appreciation allowing them, with respect for the Convention requirements, to establish whether the hearing of witnesses for the defence is likely to be of assistance in discovering the truth and, if not, to decide against the calling of such witnesses (see *Payot and Petit v. Switzerland*, Commission decision of 2 September 1991, unreported). As already indicated above, Article 6 § 3

(d) does not require the attendance and examination of every witness on the accused's behalf (see *Vidal*, cited above, § 33).

150. In the present case, the applicant complained about the Court of Appeal's refusal to call two witnesses, accountants K.S. and S.H. The Court notes, however, that accountant K.S. had already been called and examined in the District Court (see paragraphs 14 and 20 above). Therefore, it does not find the Court of Appeal's refusal to call additionally that witness unreasonable. As regards accountant S.H., the Court of Appeal justified its refusal with the fact that it was unnecessary to call her in this particular case. The Court does not consider that, in doing so, the Court of Appeal overstepped its margin of appreciation or acted arbitrarily, taking into account that the applicant's conviction was based on numerous pieces of evidence presented and examined in court, including two court-ordered accounting expert opinions and the statements of the relevant accounting experts and accountant K.S (see paragraph 14 above).

151. 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. 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

153. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. He further argued that as a result of a trial conducted in breach of the guarantees of Article 6 of the Convention he was ordered to pay damages to the victim in the amount of AMD 23,063,108 and USD 119,000. Furthermore, because of his deprivation of liberty he lost earnings for the period between May 2003 and April 2007 in the amount of EUR 36,000. The applicant claimed these amounts in respect of pecuniary damage.

154. The Government claimed that the applicant failed to produce any evidence to substantiate the non-pecuniary damage allegedly suffered by him. Furthermore, there was no causal link between the violations alleged and the pecuniary damage claimed. Besides, his claims that the alleged breaches of Article 6 led to his wrongful conviction and resulted in lost earnings were of a speculative nature.

155. The Court notes that the applicant's deprivation of liberty prior to his conviction was not the object of the present application. There is therefore no causal link between the violations found and the applicant's claim for lost earnings for that period. Furthermore, as regards the applicant's claim for pecuniary damage resulting from a breach of the guarantees of Article 6, the Court observes that the applicant's complaints under that provision were rejected. It therefore dismisses the applicant's claims for pecuniary damage. On the other hand, the Court considers that the applicant has undeniably suffered non-pecuniary damage as a result of the violations found. Ruling on an equitable basis, it awards the applicant EUR 16,000 in respect of non-pecuniary damage, to be paid to the applicant's daughter, Ms Arusyak Harutyunyan.

B. Costs and expenses

156. The applicant did not claim any costs and expenses. Accordingly, no award is made under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the alleged failure to provide the applicant with requisite medical assistance in the detention facility and the applicant's placement in a metal cage during the appeal proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure to provide the applicant with requisite medical assistance in the detention facility;

3. *Holds* that there has been a violation of Articles 3 of the Convention on account of the applicant's placement in a metal cage during the appeal proceedings;

4. *Holds* that there has been no violation of Article 6 §§ 1 and 2 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant's daughter, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 16,000 (sixteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Armenian drams 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Registrar	Josep Casadevall President