

Harutyunyan v. Armenia
(application no. 36549/03)
Judgment 28.06.07 [III Section]

Article 6

Article 6-1

Fair Trial

Use of applicant's confession statements and statements of witnesses obtained under duress in court proceedings as evidence: *violation*

Facts – In 1998 the applicant was drafted into the army. In 2002 the domestic court found the applicant guilty of premeditated murder and sentenced him to ten years' imprisonment. The court, *inter alia*, based its assessment on the applicant's confession statements and statements of the two other witnesses, however, stating that they had been subjected to duress. The competent military police officer and other police officers have been found guilty for abuse of power and sentenced to imprisonment. The court found that [the police officers] beat them for several days, delivered numerous blows to [the applicant] and others with a rubber club and squeezed their fingertips with pliers, causing injuries of various degrees. By threatening to continue the ill-treatment, [the police officers] forced [the applicant] to confess the murder and the other two to make corresponding statements. [The police officers] also threatened the victims with retaliation if they informed any higher authority about the ill-treatment. Referring to the above-mentioned findings of the court, the applicant made unsuccessful attempts to appeal against his judgment.

Law – Article 6-1– In the present case, the Court notes that the applicant was coerced into making confession statements and other witnesses into making statements substantiating the applicant's guilt. The Court further noted that the statements obtained as a result of such treatment were in fact used by the domestic courts as evidence in the criminal proceedings against the applicant. Moreover, this was done despite the fact that ill-treatment had already

been established in parallel proceedings instituted against the police officers in question. The domestic courts justified the use of the confession statements by the fact that the applicant had confessed to the investigator and not to the police officers who had ill-treated him, the fact that one of the witness had confirmed his earlier confession, and the fact that both witnesses T. and A. had made similar statements at the hearing before the domestic court. The Court, however, was not convinced by such justification. First of all, in the Court's opinion, where there is compelling evidence that a person has been subjected to ill-treatment, including physical violence and threats, the fact that this person confessed – or confirmed a coerced confession in his later statements – to an authority other than the one responsible for this ill-treatment should not automatically lead to the conclusion that such confession or later statements were not made as a consequence of the ill-treatment and the fear that a person may experience thereafter. Secondly, such justification clearly contradicted the finding made in the judgment convicting the police officers in question, according to which “by threatening to continue the ill-treatment, the police officers forced the applicant to confess”. Finally, there was ample evidence before the domestic courts that witnesses were being subjected to continued threats of further torture and retaliation. Furthermore, the fact that they were still performing military service could undoubtedly have added to their fear and affected their statements, which is confirmed by the fact that the nature of those statements essentially changed after demobilisation. Hence, the credibility of the statements made by them during that period should have been seriously questioned, and these statements should certainly not have been relied upon to justify the credibility of those made under torture.

In the light of the foregoing considerations, the Court concluded that, regardless of the impact the statements obtained under torture had on the outcome of the applicant's criminal proceedings, the use of such evidence rendered his trial as a whole unfair.

Conclusion: violation (unanimously)