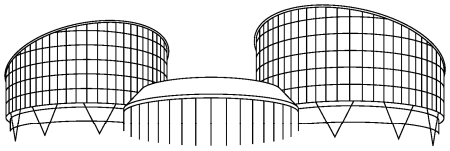

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DAVTYAN v. ARMENIA

(Application no. 30779/13)

JUDGMENT

STRASBOURG

1 March 2022

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

In the case of Davtyan v. Armenia,

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

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

Having regard to:

the application (no. 30779/13) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 26 April 2013 by an Armenian national, Mr Arman Davtyan, born in 1975 and, at the material time, detained in Yerevan ("the applicant") who was represented by Mr R. Revazyan, a lawyer practising in Yerevan;

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

the parties' observations;

Having deliberated in private on 8 February 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's alleged ill-treatment and the alleged lack of an effective investigation. It raises issues under Article 3 of the Convention.

2. On 15 June 2011 at 4.30 p.m. the applicant was taken to the Mashtots Police Station (MPS), where he was allegedly ill-treated by several police officers and confessed to a crime. The applicant was allegedly beaten with rubber clubs and parquet boards, resulting in broken fingers and a damaged nail on his left hand, and his back was allegedly burnt with an electric shock device. Thereafter he was questioned as a suspect by a police investigator who noted an injury on the applicant's hand. The applicant stated that he had sustained it by punching a wall in a fit of anger several days prior to his arrest. On 16 June 2011 at 3.15 a.m. the applicant was admitted to a police temporary holding facility where a number of injuries were recorded, including "scratch wounds and bruises on his back, and a swollen right shin". A forensic medical expert examined the applicant on the same day, as ordered by the police investigator, and confirmed a number of burns on his chest and back. The applicant stated to the expert that the "scratches" on his back had resulted from leaning on a wall and denied having been ill-treated.

On 19 June 2011 the applicant was subjected to a medical examination at the detention facility and found to have "swellings on the left shin, scratches on the back of the shin, injuries to the back, including scratches, partly scabbed".

3. On 28 July 2011 the applicant lodged a complaint with the General Prosecutor alleging his ill-treatment, which was forwarded for investigation to the Mashtots Investigative Department (MID), situated in the same building as the MPS. On 13 August 2011 the applicant was questioned by the MID investigator but refused to testify. On 15 September 2011 the forensic medical expert testified that the burns could not have been caused by an electric shock device because they had different shapes and locations and had been caused by a "hot object". On 31 October 2011 the MID investigator refused to conduct a criminal prosecution in connection with the applicant's injuries. In March 2012 the applicant lodged an out-of-time appeal against that decision. On 1 November 2012 the Court of Cassation found that the applicant had been justified in having missed the prescribed time-limit since the investigator's decision had contained no mention of the procedure for appealing against it, including the time-limit for appeal and the authority with which such an appeal was to be lodged. It further held that the MID investigator had not been in a position to conduct an impartial inquiry since the case concerned his colleagues at the MPS.

4. Following this decision, on 14 May 2013 the trial court ordered that the case be sent for a "new and impartial investigation by the Special Investigative Service" (SIS). On 20 June 2013 a criminal case was instituted in respect of the officers of the MPS and transferred for investigation to the SIS. The applicant was recognised as a victim and was questioned. A number of other investigative measures were conducted, including a new medical examination which confirmed that one of the applicant's fingernails on his left hand was deformed. The police investigator and five police officers of the MPS, including its former chief, were also questioned and denied having ill-treated the applicant. On 31 October 2013 the SIS terminated the proceedings for insufficiency of evidence, which was later upheld by the courts.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

5. The Government argued that the applicant should have applied to the Court within six months from the decision of 31 October 2011, arguing that it was the final decision within the meaning of Article 35 § 1 of the Convention because of the applicant's failure to contest it within the prescribed time-limit. The Court notes, however, that that decision was later quashed by the courts upon the applicant's out-of-time appeal, resulting in

resumption of the investigation. In doing so, they found that the applicant had been justified in having missed the prescribed time-limit. The Court therefore rejects the Government's objection.

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

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

8. In the present case, a number of injuries were detected on the applicant's hand, chest, back and left shin, including by the investigator and the medical expert, at the time of his admission to the temporary holding facility and the detention facility (see paragraph 2 above). The Government alleged that the applicant's injuries had been sustained prior to his arrival at the police station, relying on his statements made to the investigator and the medical expert, as well as the latter's findings.

9. The Court notes at the outset that there is no evidence that the applicant already had injuries when entering the police station. His first physical examination was conducted only about eleven hours later, while his questioning by the investigator, during which his hand injury was noted, took place about two and a half hours after being taken into police custody.

10. The Court further observes that the applicant's statements made in the immediate aftermath of his alleged ill-treatment, where he admitted to have injured himself prior to his arrest, may have been seriously affected by the resulting stress, trauma and fears, taking into account especially that he made those statements while still in police custody (compare *Nalbandyan v. Armenia*, nos. 9935/06 and 23339/06, § 102, 31 March 2015). It is notable that those statements were never relied on at the domestic level. Moreover, the applicant's statement regarding the burns on his back was clearly false as he alleged to have sustained those burns, which he called "scratches", by leaning on a wall. It is notable that the applicant later retracted those statements and consistently denied having sustained the injuries prior to his arrest. The Court therefore considers that the statements in question were not reliable evidence.

11. Lastly, as regards the forensic medical expert's findings, the Court notes that the expert accepted without questioning the applicant's statement that the burns on his back had originated from the leaning on a wall. He further failed to examine and record the injury on the applicant's hand, despite apparently being aware of it. Moreover, the opinion ruling out the use of an electric shock device was not expressed by the expert after the applicant's examination at the material time but only about three months later when questioned by the investigator (see paragraph 3 above). All of this casts doubt on the credibility of the expert's findings. In any event, even

assuming that an electric shock device was not at the origin of the applicant's burns, this would still not absolve the Government from their obligation to account for the applicant's injuries and to provide a plausible explanation, which the Government in this case have failed to do.

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

13. As regards the official investigation, the Court notes that, once the applicant's injuries were discovered at the police temporary holding facility, a notification was sent to the MPS, the authority investigating the criminal case against the applicant whose employees were alleged to have ill-treated him and which was therefore not an independent authority to investigate the applicant's injuries. No investigative measures were taken, apart from the applicant's forensic medical examination of 16 June 2011, which did not receive any follow up either. Following the applicant's official complaint of 28 July 2011, the investigation into his allegations was assigned to an investigator of the MID, a body which was later found by the Court of Cassation to have been not an impartial authority to investigate those allegations (see paragraph 3 above). The Court has no reasons to disagree with that finding. Thus, it was not until almost two years later that a criminal case was instituted and assigned to the SIS for an "impartial investigation". It was only then that the applicant was recognised as a victim. The Court considers that the failure to assign the investigation into the applicant's allegations to an impartial authority and to conduct an independent investigation with the applicant's effective participation for such a long period of time must have seriously undermined its effectiveness and outcome.

14. In such circumstances, the Court does not agree with the Government that any possible loss of evidence was attributable to the failure by the applicant to lodge a timely complaint. It does not consider the delay of one and a half months to be of such length to deprive the applicant's complaint of 28 July 2011 of any meaning. In this connection, it is also important to keep in mind the psychological effects that ill-treatment may have on its victims, including undermining their capacity to come forward (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 274, ECHR 2014 (extracts)). In any event, the authorities became aware of the applicant's injuries at a very early stage and it was their obligation to ensure that that matter received an adequate, prompt and impartial response. It is true that the applicant initially refused to testify when questioned about his allegations but the Court notes that that questioning was conducted at a time when the investigation was led by the MID. Thus, the applicant's

initial unwillingness to cooperate can be explained by the lack of impartiality of that authority which must have given rise to distrust on the applicant's part. It is notable that his behaviour changed as soon as he was questioned by the SIS investigator, during which the applicant provided a detailed account of his alleged ill-treatment.

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

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

18. The Court awards the applicant 12,000 EUR in respect of non-pecuniary damage, plus any tax that may be chargeable.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 12,000 (twelve thousand euros) 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Ilse Freiwirth Deputy Registrar	Jolien Schukking President