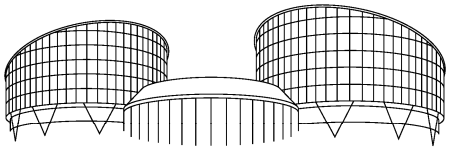

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SHIRKHANYAN v. ARMENIA

(Application no. 54547/16)

JUDGMENT

Art 13 (+ Art 3) • Art 3 (substantive) • Degrading treatment • Inadequate medical care, assistance and opportunity for outdoor exercise for detainee with health issues • No effective domestic remedy Art 5 § 3 • Reasonableness of pre-trial detention • Failure to provide relevant and sufficient reasons when ordering and extending detention Art 34 • Hinder the exercise of the right of petition • Authorities' refusal to allow private meetings between applicant and his Court representatives • Alleged non-compliance with interim measure for immediate provision of adequate medical assistance not substantiated

STRASBOURG

22 February 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Shirkhanyan v. Armenia,

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

Yonko Grozev, *President,*
Tim Eicke,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Iulia Antoanella Motoc, *substitute judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 54547/16) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Vahan Shirkhanyan ("the applicant"), on 16 September 2016;

the decision to give notice of the application to the Armenian Government ("the Government");

the decision of 16 November 2016 to grant priority treatment to the application under Rule 41 of the Rules of Court;

the decision of 9 November 2017 to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court;

the decision of 11 December 2018 to lift the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court;

the parties' observations;

Having deliberated in private on 1 February 2022,

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

INTRODUCTION

1. The case concerns the applicant's complaints that the authorities failed to provide him with adequate medical treatment and care while in detention, that his pre-trial detention was not based on "relevant" and "sufficient" reasons, and that he was denied private meetings with his representatives before the Court. He also complained of the lack of effective remedies in relation to his complaints concerning the lack of requisite treatment and care in detention. The applicant relied on Articles 3, 5 § 3, 13 and 34 of the Convention.

THE FACTS

2. The applicant was born in 1947 and lives in Yerevan. He was represented by Ms A. Maralyan and Ms K. Moskalenko, lawyers practising in Strasbourg.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant was the Deputy Minister of Defence for Armenia from 1995 to 1999. He formerly held other high-ranking positions in the Armenian Government.

6. Prior to being remanded in custody the applicant had undergone two operations. In May 2013 two veins had been removed from his right leg in V. Avagyan Medical Centre and in spring 2015 he had undergone surgery on his kidney. The applicant also had arterial problems in his left leg.

I. THE APPLICANT'S ARREST AND DETENTION

7. On 24 November 2015 the National Security Service ("the NSS") arrested an armed group in Yerevan. On the same date the NSS instituted criminal proceedings against A.V. for having allegedly formed and led a criminal organisation.

8. On 19 December 2015 the applicant was arrested by NSS officers on suspicion of participating in said criminal organisation.

9. On the same date the applicant was questioned as a suspect and stated, *inter alia*, that he had become acquainted with A.V. when, at some point, the latter was introduced to him by a mutual acquaintance. He categorically denied having known anything about A.V.'s alleged criminal activity.

10. On 21 December 2015 the applicant was charged under Article 223 § 2 of the Criminal Code (participation in a criminal organisation).

11. On the same date the investigator submitted a request before the Kentron and Nork-Marash District Court of Yerevan ("the District Court") seeking to have the applicant detained for a period of two months on the grounds that he might abscond and obstruct the investigation. The request also referred to the nature and gravity of the charges.

12. Later on the same date, at the hearing before the District Court, the applicant argued that no evidence had been produced to substantiate that there were grounds to believe that he would hide from the investigating authority. He had been at liberty for about a month after the discovery of the criminal organisation at issue and had had every possibility to go into hiding. Moreover, he had described the circumstances in which he had come

to know the other accused in the case and he also had health problems and a permanent place of residence.

13. By a decision of the same date the District Court decided to allow the investigator's application, finding that the circumstances of the case and the evidence obtained provided sufficient reasons to believe that, if the applicant remained at large, he could obstruct the proceedings.

14. On the same date the applicant was admitted to Yerevan-Kentron detention facility.

15. On 25 December 2015 the applicant lodged an appeal against the detention order of 21 December 2015 (see paragraph 13 above).

16. By a decision of 22 January 2016 the Criminal Court of Appeal ("the Court of Appeal") upheld the decision of 21 December 2015 (see paragraph 13 above).

17. On 9 February the investigator sought a two-month extension of the applicant's detention on the ground that it was necessary to continue the investigation and to conduct interviews, confrontations and examinations.

18. On 14 February 2016 the District Court decided to extend the applicant's pre-trial detention by two months on the same grounds as those stated in its decision of 21 December 2015 (see paragraph 13 above) and with reference to the reasons stated in the investigator's request (see paragraph 17 above).

19. The applicant lodged an appeal, which was rejected by the Court of Appeal on 12 March 2016.

20. On 6 April 2016 the applicant lodged an appeal on points of law against the decision of the Court of Appeal of 12 March 2016.

21. The investigator applied for extensions of the applicant's pre-trial detention at two-month intervals. Those applications were granted by the District Court on 13 April, 14 June, 11 August and 12 October 2016 on the grounds that he could obstruct the investigation, hide from the investigating authority and evade criminal liability. The applicant's appeals to the Court of Appeal and his further appeals to the Court of Cassation remained unsuccessful.

22. On 21 October 2016 Judge A. of the District Court took over the case.

23. On 24 November 2016 Judge A. made a decision to set the case down for trial whereby he decided, *inter alia*, to leave the applicant's preventive measure unchanged stating that it continued to be necessary. The applicant's appeals against this decision were also unsuccessful.

24. The applicant's subsequent requests to be released from pre-trial detention were rejected by the District Court's decisions of 1 September and 3 November 2017. His appeals against those decisions were not examined on the grounds that the decisions in question were not subject to appeal.

II. THE APPLICANT'S STATE OF HEALTH WHILE IN DETENTION

25. On 30 January 2016 the applicant's lawyer applied to the investigator, seeking permission to transfer the applicant to V. Avagyan Medical Centre to undergo examination and urgent surgical intervention in view of the deterioration of his health due to the presence of thrombosis in his left leg.

26. By a decision of 3 February 2016 the investigator rejected the application and referred the arguments concerning the applicant's state of health to the administration of the detention facility.

27. On 8 February 2016 the applicant's lawyer applied to the Head of the Penitentiary Service of the Ministry of Justice ("the Penitentiary Service") for the applicant's urgent transfer to V. Avagyan Medical Centre due to a drastic deterioration in his health as a result of the progress of the thrombosis in his left leg.

28. In reply, on 12 February 2016 the applicant's lawyer was informed that on 2 February 2016 the applicant had been examined by a surgeon who had recommended a duplex scan of the lower limbs. On 5 February 2016 the Head of the Penitentiary Service had applied to the Minister of Health to organise the recommended medical examination under the public healthcare system.

29. On 15 February 2016 the applicant underwent a duplex scan of the lower limbs.

30. On 16 February 2016 the applicant was examined by a vascular surgeon from the Armenia Medical Centre who visited him in the detention facility. According to the relevant records, the applicant did not need surgery and conservative treatment with medication was prescribed.

31. On 10 March 2016 the applicant asked to be examined by his doctor.

32. On 17 March 2016 the applicant's doctor was allowed to visit him. The doctor recorded that the applicant complained of pain, fatigue and numbness in the lower limbs. He recommended that the applicant undergo arterial duplex scanning of the lower limbs in order to obtain accurate data concerning his state of health.

33. On 18 March 2016 the applicant's doctor visited him again and ordered his urgent transfer to hospital by ambulance. On the same day the applicant underwent surgery in V. Avagyan Medical Centre. A vascular filter was implanted to prevent the progress of thrombosis in his left leg.

34. On 21 March 2016 the applicant was taken back to the detention facility. The applicant's discharge record stated he was being transferred to the Yerevan-Kentron detention facility for continued further treatment. Surveillance by an angiologist, a duplex scan after three months, a chest X-ray after two weeks and certain medication as well as elastic bandaging were recommended.

35. According to the applicant, he did not receive adequate post-operative care after his return to the detention facility.

36. On 25 March 2016 the investigator ordered a forensic medical examination of the applicant. The experts were requested to determine, *inter alia*, whether the applicant's treatment could be organised in the detention facility, and whether his treatment, including the implantation of the vascular filter, had been necessary.

37. On 2 April 2016 the applicant underwent X-ray examinations at V. Avagyan Medical Centre.

38. On 8 April 2016 the forensic medical examination was completed. According to the experts' report, the implantation of the vascular filter had been absolutely necessary to prevent life-threatening pulmonary thromboembolism. Upon discharge from V. Avagyan Medical Centre the applicant had received appropriate recommendations for his treatment, which could be organised in the detention facility.

39. On 7 July 2016 the applicant was examined by his neurologist who advised MRI (magnetic resonance imaging) and MRT (magnetic resonance tomography) scans, a transcranial Doppler ultrasound test and dynamic supervision.

40. On 20 July 2016 the *Centre de la Protection Internationale*, an international human rights association based in Strasbourg, made an application to the Human Rights Defender of Armenia requesting that he examine the situation regarding the applicant's health and the authorities' reluctance to provide him with adequate medical assistance.

41. On 3 August 2016 the applicant underwent an MRT scan.

42. On 4 August 2016 he underwent a transcranial Doppler examination which concluded that he had moderate reduction of blood flow in the brain.

43. On 11 August 2016 the applicant was examined by his neurologist who diagnosed multifocal brain damage, vascular encephalopathy and gross impairment of coordination. In view of the deterioration of the applicant's condition, the doctor prescribed several medical examinations and recommended in-patient treatment in a specialist hospital.

44. On 26 September 2016 the applicant was examined by an angiologist at V. Avagyan Medical Centre, who recommended duplex scanning, a d-dimer blood test and an X-ray, taking into account that six months had passed since the surgery.

45. On the same date the applicant's lawyer made a request to the administration of the detention facility, asking them to organise the examinations indicated by the doctor. Having received no reply, the applicant's lawyer sent a similar request on 30 September 2016. At the same time, he complained to the Human Rights Defender of the inactivity of the administration of the detention facility.

46. On 5 October 2016 a medical panel consisting of six doctors examined the applicant and the documents relating to his medical

examinations. They recorded that the applicant complained of pain in the chest area, a burning sensation in the lower limbs and vertigo. The panel recommended continuing the applicant's medical examinations.

47. In October 2016 the applicant underwent another set of duplex scans, ultrasounds and X-rays in different medical centres.

48. By a decision of 10 November 2016 the Human Rights Defender found a violation of the applicant's rights guaranteed by the Constitution and international treaties. The relevant parts of the decision read as follows:

> "... Neither Yerevan-Kentron detention facility nor the Central Prison Hospital have an angiology unit or department... therefore the Human Rights Defender finds that [the applicant's] medical treatment in the detention facility is inadequate. In such cases persons deprived of liberty should be transferred to a specialist medical centre...
>
> According to the information provided by the Ministry of Justice in response to the Human Rights Defender's enquiry, the medical examinations that had been recommended by the neurologist ... requested by [the applicant's] relatives, in particular "brain MRT", "1,5 Tesla MRI scan", "doppler ultrasound test" had been carried out on 3 and 4 August 2016.
>
> However, during their visit to the ... Yerevan-Kentron detention facility on 11 October 2016 the members of the staff of the [Human Rights Defender's Office] did not find any document attesting to the fact that the "1,5 Tesla MRI scan" advised by the neurologist ... had been carried out...
>
> The applicant's care during the entire period of his stay at the detention facility has been ensured by his cell-mates... In these circumstances it is evident that [the applicant] has not been provided with proper specialist care.
>
> The Human Rights Defender considers that [the applicant's] care by his cell-mates would not be problematic if the Ministry of Justice had submitted evidence which would establish that such care had been provided by a person deprived of liberty who had the relevant training.
>
> Furthermore, the Ministry of Justice had failed to provide evidence, including relevant medical reports, substantiating the absence of the necessity to transfer the applicant to civilian medical institutions..."

49. On 18 November 2016 a medical panel consisting of four doctors examined the applicant and the results of his medical examinations. In its conclusion the panel recommended to conduct a Holter monitor test and an echocardiography as well as a lumbar spine CT scan. The panel found that the applicant did not need inpatient treatment and proposed to return to the issue upon receipt of the results of the recommended examinations.

50. In November 2016 the applicant underwent several other medical examinations, including computer tomography, a Holter monitor test, and an electroneuromyography. Conservative treatment with medication was recommended. Prescriptions for two types of medication were given for a period of ten days.

51. On 25 November 2016 the applicant's lawyer sent a written query to the Head of the Yerevan-Kentron detention facility asking to be informed of the last occasion on which the applicant was able to bathe.

52. By letter of 29 November 2016 the Head of the Yerevan-Kentron detention facility stated that the applicant had refused to bathe since 12 August 2016. He had been offered the possibility to bathe regularly, according to the time schedule of the detention facility, but he had refused and stated that he would only take a bath in a bath tub with the help of his wife.

53. In December 2016 the Public Observers Group to Monitor Penal Institutions and Entities under the Ministry of Justice ("the Public Observers Group") visited the applicant and stated in its report to the Minister of Justice that, although according to the medical data the applicant's medical treatment could be organised in the detention facility, his state of health had obviously deteriorated. The Public Observers Group proposed the applicant's transfer to a civilian hospital, taking into account that his treatment in the detention facility had not produced any results.

54. On 9 January 2017 the applicant asked to be provided with a wheelchair in view of his mobility problems, which was refused.

55. On 9 February 2017 the Court requested information from the Government concerning the applicant's state of health and the medical and other care provided to him in detention (see paragraph 80 below).

56. On 22 February 2017 the Government replied to the questions put by the Court and stated that the Head of the Penitentiary Service had granted permission to transfer the applicant to a civilian hospital for examination and treatment the next day (see paragraph 81 below).

57. On 23 February 2017 the applicant was taken to Erebouni Medical Centre. According to the applicant, for the first time in seven months he was able to meet his hygiene needs (that is, to take a shower) and received treatment which provided some relief from the constant pain he suffered.

58. On 3 March 2017 the applicant was discharged from hospital and transferred back to the Yerevan-Kentron detention facility. According to the applicant's discharge record, he suffered from lumbar degenerative disc disease, lumbago (low back pain), radiculopathy, heart problems, pulmonary artery thromboembolism, enlarged prostate, kidney cysts and post-thrombotic syndrome affecting the lower limbs. The doctors recorded that the applicant could not stand independently to undergo certain neurological examinations. They indicated the need to undergo an MRT scan, prescribed medication and advised supervision by a vascular surgeon, a neurosurgeon, a cardiologist and a urologist.

59. On 5 March 2017 the applicant's lawyer issued a media report concerning the conditions of the applicant's detention following his return from treatment in hospital. According to the report, he was placed in the worst cell of the detention facility: it was extremely damp, the walls were covered with mould, and it was very narrow, with the beds so close to each other that even a healthy person would have difficulty moving around. The applicant was placed in a cell measuring 15 sq. m. with four other detainees

and a fifth detainee was brought in after he complained to the administration about the conditions in the new cell.

60. The Public Observers Group tried to visit the applicant on 6 March 2017 in order to check the conditions of his detention. The administration of the detention facility refused the observers access to the applicant's cell. In their report to the media in this respect the Public Observers Group stated that such a ban made it appear likely that the disseminated information on the applicant's detention conditions was accurate.

61. On 22 March 2017 the applicant's lawyer sent letters to the Human Rights Defender, the Minister of Justice, the Head of the Penitentiary Service and the Head of Kentron detention facility stating, in particular, that most of the medication prescribed to the applicant was not being provided to him and that the recommendations made in the discharge note of 3 March 2017, including the MRT scan and supervision by a vascular surgeon, a neurosurgeon, a cardiologist and a urologist had not been implemented. It was further stated that the conditions of the applicant's detention after his return from hospital had significantly deteriorated: he had been placed in a very damp cell situated in the northern part of the facility with no natural light during the entire day. Not being able to move out of the cell due to his state of health, the applicant was thus deprived of natural light all the time.

62. In his reply of 27 March 2017 the head of the detention facility stated that the applicant had always been, and still was, under medical supervision and that appropriate medical specialists from the Ministry of Health had visited him. Those specialists had found that the MRT scan was permissible for the applicant while the Penitentiary Service had applied to the Ministry of Health to organise this examination within the public healthcare system.

63. On the same date the Deputy Head of the Penitentiary Service sent a letter to the applicant's lawyer stating that only one of the four medicines had been made available to the applicant. As regards the other three, two were not included in the general purchasing list of the Penitentiary Service while the remaining one was out of stock and would be made available the following month. It was also stated that the applicant had been examined by a vascular surgeon on 22 March 2017, and by a cardiologist the following day, who had not envisaged any change in the applicant's treatment. On 24 March 2017 consultations were held with a rheumatologist, another vascular surgeon and a neurosurgeon. The vascular surgeon had prescribed medication and elastic bandaging while walking and had recommended an MRT scan with low power equipment. The organisation of the said examination was in progress.

64. On 3 April 2017 the applicant was transferred to the Central Prison Hospital.

65. On 14 August 2017 a medical panel composed of specialists from the Yerevan State Medical University and the Ministry of Health carried out

an examination of the applicant and delivered an opinion whereby it concluded that certain positive dynamics had been observed in the applicant's state of health as compared to the previous examination. The specialists prescribed additional medication and further examinations and noted that the conditions of the applicant's detention and the level of availability of the medical personnel were satisfactory from the perspective of the applicant's state of health.

III. ATTEMPTS TO HAVE A PRIVATE MEETING WITH REPRESENTATIVES BEFORE THE COURT

66. By an authority form signed on 19 May 2016 the applicant authorised Ms A. Maralyan, legal expert at the *Centre de la Protection Internationale* based in Strasbourg, to represent him in the proceedings before the Court.

67. On 17 June 2016 Ms Maralyan applied to the administration of the Yerevan-Kentron detention facility, seeking a private meeting with the applicant. She attached the authority form signed by the applicant (see paragraph 66 above) to her request. Ms Maralyan's request was refused on the same date on the grounds that pursuant to Section 15 of the Law on Holding Arrested and Detained Persons ("the Law") (see paragraph 95 below), she should seek the relevant permission from the body conducting the investigation.

68. On 30 June 2016 Ms Maralyan presented herself to the investigator as a legal expert at the *Centre de la Protection Internationale* and asked him to grant her permission to have a private meeting with the applicant as his representative before the Court.

69. On 4 July 2016 the investigator informed her that there was no procedure for a confidential meeting of a detainee with a legal expert at the *Centre de la Protection Internationale* and the investigating authority had no power to grant her the permission sought. It was further stated that Ms Maralyan had the right to have a non-private meeting with the applicant, taking into account that there was no restriction on the latter's visits and telephone calls.

70. On 1 August 2016 the applicant lodged a complaint with the District Court seeking permission to have a private meeting with his representative before the Court, stating that the prohibition of such a meeting was in breach of Article 34 of the Convention.

71. By decision of 3 August 2016 the District Court returned the applicant's complaint with reference to Sections 52 § 1 and 53 § 2 (8) and (9) of the Code of Criminal Procedure (see paragraphs 97 and 98 below) on the grounds that he had failed to complain about the prohibition to have a private meeting with Ms Maralyan to the investigating authority, the

administration of the detention facility and, in the case that his complaints were not granted, then to the prosecutor supervising the investigation.

72. On 24 August 2016 Ms Maralyan once again applied to the administration of the Yerevan-Kentron detention facility, seeking a private meeting with the applicant. Her request was refused on the same date on the grounds that she had failed to submit an official document proving that she was the applicant's authorised representative in the proceedings before the Court. Furthermore, pursuant to Section 15 of the Law (see paragraph 95 below), a detained person could have confidential meetings only with a defence lawyer or an advocate who had asked to visit a detained person with the purpose of assuming the latter's defence. Ms Maralyan was advised that she could have a non-private meeting with the applicant.

73. On 31 August 2016 Ms Maralyan had a non-private meeting with the applicant in the presence of prison guards.

74. On 16 September 2016 the applicant lodged a completed application form with the Court, whereby he authorised Ms Maralyan and Ms K. Moskalenko, lawyers from the *Centre de la Protection Internationale*, to represent him in the proceedings before the Court.

75. On 27 October 2016 Ms Maralyan attended the detention facility requesting a meeting with the applicant. Having waited for hours for permission to meet him, she was eventually informed at 5 p.m. that no meetings were allowed past this hour.

76. On 20 January 2017 Ms Moskalenko requested permission to have a private meeting with the applicant in order to discuss certain issues with regard to the latter's application before the Court. The administration of the detention facility refused this request. The Government submitted that Ms Moskalenko's request had been refused on the grounds that she had been unable to produce a document indicating that she was the applicant's representative before the Court. When asked whether she held an advocate's licence in Armenia, her response had been negative. Accordingly, her request to have a private meeting with the applicant had been refused pursuant to the requirements of Section 15 of the Law (see paragraph 95 below).

The applicant contests this. According to him, after Ms Moskalenko had submitted the signed authority form together with his letter expressing his wish to have a meeting with her, she had been requested to provide a letter from the Court indicating that she was his representative and the explanations that no such document could be provided by the Court were not accepted.

77. On 10 August 2017 Ms Maralyan requested the administration of the Central Prison Hospital to have a private meeting with the applicant to discuss various issues with regard to the preparation of his observations. No response was received.

78. On 11 August 2017 Ms Maralyan submitted a similar request to the District Court which by then had taken over the examination of the case (see paragraph 22 above). Her request was granted on 16 August 2017 and she had a confidential meeting with the applicant on the same day.

IV. REQUEST FOR AN INTERIM MEASURE AND SUBSEQUENT DEVELOPMENTS

79. On 2 February 2017 the applicant requested the Court to apply Rule 39 of the Rules of Court and to indicate to the Armenian authorities to organise his transfer to a specialist hospital for treatment.

80. On 9 February 2017 the Government were requested under Rule 54 § 2 (a) of the Rules of Court to submit information about the applicant's health, the quality of the medical assistance he was receiving and the conditions of his detention, including whether the applicant was being provided with assistance in meeting his daily needs.

81. On 22 February 2017 the Government responded, providing the Court with some excerpts from the applicant's medical file. Relying on the medical panel's conclusion of 18 November 2016 (see paragraph 49 above) the Government submitted that the applicant's state of health did not necessitate inpatient treatment. Furthermore, since February 2016 the applicant had undergone a vast number of medical examinations, most of which had been carried out in specialist clinics. The Government submitted that the applicant had occasionally been offered the opportunity to take a shower but he himself had refused, and that he was being provided with assistance and bandaging was being carried out. Lastly, the Government stated that the applicant's transfer to a civilian hospital had been scheduled for 23 February 2017 in order for him to undergo further examinations and receive inpatient treatment.

82. In response to the Government's submissions, on 8 March 2017 the applicant confirmed that he had indeed been taken to a civilian hospital (see paragraph 57 above) where for the first time in seven months he had been able to meet his hygiene needs. He had also received treatment which had provided him with some relief from the constant pain that he was experiencing. However, after his return he continued to be deprived of adequate medical care and, in addition, was placed in a cell with unacceptable conditions (see paragraph 59 above). The applicant contested the Government's claims that he had refused to take a shower and stated that he had been unable to reach the shower rooms which were situated in the basement. The applicant further contested that he was provided with assistance and that bandaging was being carried out.

83. On 24 March 2017 the Court (the duty judge) decided to reject the applicant's request under Rule 39 of the Rules of Court.

84. On 1 November 2017 the applicant submitted another request under Rule 39 of the Rules of Court whereby he requested the Court to indicate to the Armenian authorities that he should urgently be provided with specialist medical care. The applicant relied on a medical expert report delivered on the same date by an independent medical panel composed of Russian doctors, which had indicated that the applicant was receiving superficial, symptomatic treatment which increased the risk of the disease progressing and might lead to fatal consequences. In the panel's opinion the applicant was in urgent need of specialist medical care.

85. On 9 November 2017 the Court (the duty judge) decided to indicate to the Government that the applicant should immediately be provided with requisite medical assistance including, if necessary, his placement in a specialist medical facility and that a medical panel should be set up on a parity basis to examine the applicant with a view to diagnosing his specific problems and determining the necessity of any long-term or immediate treatment. Furthermore, the Government was to ensure the applicant's treatment in accordance with the relevant findings of the panel.

86. On 22 December 2017 the applicant's lawyer sent a letter to the Minister of Justice stating, *inter alia*, that the applicant's lawyers and relatives had already contacted several medical specialists who had given their prior agreement to be involved in the panel that was to be set up to carry out the applicant's medical examination.

87. In his letter of 10 January 2018 sent to the Court the applicant submitted that that the Government had disregarded the interim measure indicated to them by the Court's decision of 9 November 2017. He referred to a letter of 9 January 2018 from the Ministry of Justice according to which the applicant was receiving the treatment prescribed to him further to his medical examinations in October 2017 and there was no need for in-patient treatment or additional examinations.

88. On 24 January 2018 the Government was requested to comment on the applicant's letter of 10 January 2018.

89. In their letter dated 7 February 2018 the Government submitted that the Court's notification about the application of Rule 39 of the Rules of Court "had remained unnoticed due to a technical discrepancy". The Government claimed that it had only become aware of the interim measure indicated by the Court on 25 January 2018 upon receipt of the Registry's letter of 24 January 2018. Having found out about the interim measures indicated in the case, the Government had immediately contacted the applicant's lawyer and a letter was sent to him expressing the Government's willingness to set up the requested medical panel as soon as possible. In his letter of 1 February 2018 the applicant's lawyer had submitted that the applicant had no financial means to have the doctors that he wished to be appointed to the panel and enquired about the possibility that the Government allocate the required sums. According to the Government, they

ensured that all the relevant measures indicated under Rule 39 of the Rules of Court had been implemented, with the exception of setting up a medical panel, due to the applicant's lack of means to appoint the doctors of his choice.

90. Ultimately, no medical panel was set up. The Court was not provided with further information about the relevant developments.

91. By the letter of 27 June 2018 the applicant informed the Court that he had been released from detention on 25 June 2018 by a decision of the District Court of the same date.

92. On 11 December 2018 the Court decided to lift the interim measure previously indicated under Rule 39 of the Rules of Court (see paragraph 85 above).

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. Detention on remand

93. The relevant provisions of the domestic law concerning the imposition of detention on remand, and the grounds and procedure for its extension are set out in the Court's judgment in the case of *Ara Harutyunyan v. Armenia* (no. 629/11, §§ 30-36, 20 October 2016).

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

94. According to Section 13 of the Law on Conditions for Holding Arrested and Detained Persons, a detainee has the right, *inter alia*, to healthcare, including sufficient food and urgent medical assistance. A detainee, personally or via his lawyer or legal representative, has the right to lodge complaints concerning a violation of his rights with the administration of the detention facility, its superiors, the court, the Prosecutor's office, the Human Rights Defender, State and local self-governance bodies, non-governmental entities and political parties, the mass media, as well as international human rights protection bodies or organisations.

95. According to Section 15, an arrested or detained person has the right to meet in private with his defence lawyer or an advocate who has asked to visit him with the purpose of assuming his defence, without limitation on the number and duration of visits, irrespective of working days or hours.

Upon a detained person's request, the investigating authority may grant him permission to have private meetings with an advocate who is not his defence lawyer in the criminal case, if that is required for the provision of

legal assistance which is not related to the examination of the criminal case. The investigating authority considers and decides such a request and the latter has a right to lodge an appeal against the investigating authority's decision in accordance with the procedure set out in the Code of Criminal Procedure.

The detained person's meeting with an advocate or defence lawyer is granted when the advocate or the defence lawyer presents an identification document and an advocate's licence along with the relevant certificate issued by the body conducting the criminal proceedings addressed to the administration of the place for keeping arrested or detained persons.

96. Section 21 provides that the administration of a detention facility shall ensure the sanitary, hygienic and anti-epidemic conditions necessary for the preservation of health of detained persons. 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.

C. Code of Criminal Procedure

97. According to Article 52 § 1, the prosecutor carries out criminal prosecutions and oversees the lawfulness of any inquest and preliminary investigation.

98. According to Article 53 § 2 (8) and (9) when carrying out procedural supervision of the investigation, it is the exclusive power of the prosecutor to, *inter alia*, eliminate unlawful or unsubstantiated decisions of the investigation body, investigator, subordinate prosecutor and to decide on the appeals against the decisions and actions of the investigating authority, investigator, subordinate prosecutor.

99. Article 290 § 1 provides that the suspect, the accused, the defence lawyer, the victim, the participants in the proceedings and other persons whose rights and lawful interests have been violated are entitled to lodge complaints with a court against the unlawfulness and unfoundedness of the decisions and actions of the body of preliminary inquiry, the investigator, the prosecutor or the bodies carrying out operative and intelligence measures, which are prescribed by the Code, if their complaint has not been granted by a prosecutor.

D. Law on the Prosecutor's Office of 22 February 2007 (no longer in force)

100. According to Section 29 § 1, as in force at the material time, the prosecutor oversees the lawfulness of the application of penalties. When exercising this power the prosecutor has the right, *inter alia*, to visit the places of keeping persons deprived of liberty and to examine documents,

including decisions, orders of the administration of the relevant detention facilities (Section 29 § 4 (1), (2) and (3)). In case the prosecutor suspects a breach of the rights of a person in respect of whom a penalty is applied, he has the right to request the relevant official to provide explanations concerning the latter's actions or inaction.

E. Civil code

101. The relevant provisions of the Civil Code concerning compensation for damage suffered as a result of a violation of a person's rights guaranteed by the Convention provide the following.

102. Under Article 17 § 1, a person whose rights have been violated may claim full compensation for the damage suffered, unless the law or contract provides for a lower amount of compensation. The relevant damage consists of the expenses borne or to be borne by the person whose rights have been violated, in connection with restoring the violated rights as well as any loss of property or damage to it (material damage), including loss of income and any non-pecuniary damage (Article 17 § 2). Non-pecuniary damage may only be compensated in the cases provided for by the Civil Code (Article 17 § 4).

103. Article 162.1 § 2 provides that a person has the right to claim compensation for non-pecuniary damage if it has been established by the prosecuting authority or a court that, as a result of a decision, action or omission by a State or local governance body or one of its officials, his or her fundamental rights guaranteed by the Constitution and the Convention have been violated.

104. Article 1087.2 §§ 3 and 4 provide that non-pecuniary damage suffered as a result of a violation of fundamental rights may be compensated regardless of whether there is any fault on the part of a State official. Non-pecuniary damage is compensated from the State budget. If the fundamental right included in Article 162.1 has been violated by a local governance body or one of its officials, non-pecuniary damage is compensated from the relevant local budget.

105. A claim for compensation for non-pecuniary damage may be submitted to a court together with a claim seeking to establish a breach of the rights set out in Article 162.1 within one year of the time the person became aware of the breach, as well as within six months of the date on which a judicial decision establishing the breach of the right in question came into force. If the breach has been established by a law-enforcement body, a claim for compensation for non-pecuniary damage may be submitted no earlier than two months but no later than one year after the date on which the person concerned became aware of the matter (Article 1087.2 § 9).

106. Since 1 November 2014 Article 17 § 2 (see paragraph 102 above) has included non-pecuniary damage in the list of the types of civil damage for which compensation can be claimed in civil proceedings.

As a result, the Civil Code was supplemented by new Articles 162.1 and 1087.2 (see paragraphs 103 and 104 above) which regulate the procedure for claiming compensation for non-pecuniary damage from the State for violation of certain rights guaranteed by the Armenian Constitution and the Convention.

Until the introduction of further amendments on 30 December 2015 (in force from 1 January 2016), compensation in respect of non-pecuniary damage could be claimed from the State where it had been established by a judicial ruling that a person's rights guaranteed by Articles 2, 3 and 5 of the Convention had been violated, and also in cases of wrongful conviction.

II. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. CPT: Report to the Armenian Government on the visit to Armenia carried out by the CPT from 5 to 15 October 2015, CPT/Inf(2016) 3

107. The relevant parts of this report read as follows (footnotes have been omitted):

> "68. Further, outdoor exercise [in Yerevan-Kentron Prison] continued to take place in small and oppressive yards on the roof of the building - enclosed areas surrounded by high walls topped with a wire mesh and fitted with a makeshift shelter against inclement weather and a bench, but no other equipment. As during the previous visits, inmates from different cells were not allowed to associate in the exercise yards, except for the lifers.
>
> ...
>
> 76. ... The health-care staff complement had remained unchanged at Yerevan-Kentron Prison i.e. it consisted of a full-time GP and a full-time nurse. There was still no 24-hour coverage by a health-care professional.
>
> 77. ... Concerning Yerevan-Kentron Prison, the Committee recommends that steps be taken to ensure that a person qualified to provide first aid, preferably someone with a recognised nursing qualification, is present around the clock at the establishment, including on weekends.
>
> ...
>
> 78. ... the delegation received numerous complaints from prisoners in all the establishments visited about access to specialised care, and noted that, as a rule, inmates were expected to pay for anything more than the most basic care (except in emergency). Moreover, as in the past, there were long delays (up to several months) in the transfer of inmates to outside hospital facilities, including to the Central Prison Hospital. In this context, the delegation gained the impression that there was a lack of clear objective criteria for hospitalisation. The CPT calls upon the Armenian authorities to ensure that prisoners in need of specialist treatment (including outside

consultations/examinations and hospitalisation) are granted access to such care without undue delay and free of charge.

...

80. The CPT notes with great concern the lack of progress as regards the supply of medicines (other than for tuberculosis) in prisons. The relevant budget remained very limited and inmates frequently had to rely on their own financial resources or those of their relatives in order to receive the medication prescribed to them. The CPT calls upon the Armenian authorities to ensure that all prisons are supplied with appropriate medication, free of charge for the inmates."

B. Response of the Armenian Government to the Report of the CPT on its visit to Armenia from 5 to 15 October 2015, CPT/Inf (2016) 32

108. The relevant parts of the Armenian Government's response read as follows (footnotes have been omitted):

"...In cooperation with Human Rights Defender's (hereinafter, the HRD) Office and practicing lawyers the Law on Holding Arrested and Detained Persons has been amended. Following the amendments the person deprived of liberty is entitled to meet his defence counsel or an advocate visiting to undertake the defence of the case in private, without hindrance, limitation to the number and length of the meetings and irrespective of the working days or hours. He/she also has a right to meet not only with his/her defence counsel but also with any advocate not involved in the defence of his/her case for matters not connected with the investigation of the case (e.g. divorce or any other civil matter).

...

62. As to the problem of ventilation in some of the cells at the Yerevan Detention Centre, the deficiencies of the ventilation system have been eliminated, it has been cleaned, and as a result the proper ventilation has been guaranteed. At the same time, it is to be noted that major refurbishment works will be carried out at the Yerevan Detention Centre.

...

117. With regard to the remarks concerning the material conditions of Yerevan-Kentron Penitentiary Establishment, the following must be mentioned. There is no issue of overcrowding at Yerevan-Kentron Penitentiary Esablishment in terms of the living area prescribed by the legislation, as well as in terms of bed capacity. All the cells are in a satisfactory condition, and there are no dilapidated cells. Although there is no central ventilation system, daily ventilation is duly provided by opening the windows of the cells. As for ensuring proper ventilation in the cells, it will become possible after structural modifications in case of relevant financial assistance.

...

133. As to Yerevan-Kentron Penitentiary Establishment, currently, a qualified nurse is employed at the medical service unit of the establishment on a contractual basis who provides first aid - where necessary - also on non-working days and hours. The process of staffing the mentioned institution with the vacant post of a feldsher is in the spotlight of senior officials of the Penitentiary Service as a matter of urgency.

...

137. ... medical services provided in the penitentiary system are free of charge. Besides, within the scope of the free medical assistance guaranteed by the state, examinations and medical treatments are carried out at healthcare institutions of the Republic of Armenia.

...

139. Remand prisoners and convicts benefit from the services of, as well as examinations and treatment carried out by the medical specialists chosen by them and working outside of the penitentiary system - on a paid basis - in civil hospitals operating outside of the penitentiary system. Medical services are provided promptly to the remand prisoners and convicts who are in need of emergency medical assistance, while others - according to plan.

...

151. ... The comparison made according to years shows that the medical services of the Penitentiary Service are replenished with additional types of medicines every year. ... As regards medicine brought to penitentiary institutions by the relatives of persons deprived of liberty, pursuant to Government Decree No. 825-N persons deprived of liberty are entitled to freely benefit from services of other medical specialists and receive medicine not prohibited by the legislation..."

C. Standard Minimum Rules for the Treatment of Prisoners

109. Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules states, in so far as relevant, the following:

"Legal advice

23.1 All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.

23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.

23.3 Where there is a recognised scheme of free legal aid, the authorities shall bring it to the attention of all prisoners.

23.4 Consultations and other communications, including correspondence about legal matters between prisoners and their legal advisers, shall be confidential.

23.5 A judicial authority may, in exceptional circumstances, authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security.

23.6 Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings."

D. European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights

110. The relevant provisions of the European Agreement relating to Persons Participating in Proceedings of the Court state the following:

"**Article 1**

1. The persons to whom this Agreement applies are:

a. any persons taking part in proceedings instituted before the Court as parties, their representatives and advisers;

...

Article 3

1. The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Court.

2. As regards persons under detention, the exercise of this right shall in particular imply that:

...

c. such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Court, or any proceedings resulting therefrom."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

111. The applicant complained that the authorities failed to provide him with adequate medical treatment and daily assistance in detention, in breach of Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

112. The applicant further complained that he had not had at his disposal an effective remedy for his complaints under Article 3 of the Convention, as required under Article 13 of the Convention, which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...."

A. Admissibility

113. The Government argued that the applicant had failed to raise his complaints before the domestic authorities listed in Section 13 of the Law on Conditions for Holding Arrested and Detained Persons ("the Law"; see paragraph 94 above) and to claim compensation for non-pecuniary damage from the State (see paragraphs 101-105 above).

The Government further argued that the applicant's complaints referring to the events before 16 March 2016 should be declared inadmissible for

having been lodged outside the six-month time-limit in view of the fact that the applicant had introduced his complaints on 16 September 2016.

114. The applicant submitted that his numerous complaints to the authorities, including to the administration of the detention facility, had been fruitless and that he had therefore not had an effective remedy by means of which to complain about the quality of his treatment.

115. The Court notes that the Government's objection in respect of the non-exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint that he did not have at his disposal an effective remedy for his complaints concerning the absence of effective medical care and assistance while in detention. Accordingly, the examination of the Government's objection should be joined to the merits of the applicant's complaint under Article 13 of the Convention.

116. As regards the Government's objection concerning the non-observance by the applicant of the six-month time-limit, the Court observes that the Government did not specify the final decision from which in their view the six-month period had started to run in respect of the applicant's complaints pertaining to the period before 16 March 2016.

117. The Court reiterates that as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant, and, where the situation is a continuing one, once that situation ends (see, among many other authorities, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 259, ECHR 2014 (extracts)).

118. The Court's approach to the application of the six-month rule to complaints concerning the conditions of an applicant's detention has been summarised as follows: a period of detention should be regarded as a "continuing situation" if the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interviews or other procedural acts would have no impact on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation". The complaint about the conditions of detention must be filed within six months of the end of the situation complained about or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012; and *Gorbulya v. Russia*, no. 31535/09, § 47, 6 March 2014).

119. The Court observes that the applicant was admitted to Yerevan-Kentron detention facility on 21 December 2015 from where he was

transferred to the Central Prison Hospital on 3 April 2017 (see paragraphs 14 and 64 above). It further observes that during his stay in Yerevan-Kentron detention facility the applicant was twice transferred to hospital for brief periods – from 18 to 21 March 2016 and from 23 February to 3 March 2017 (see paragraphs 33-34 and 57-58 above). Having regard to its approach to the application of the six-month rule to complaints concerning conditions of detention (see paragraph 118 above), the Court considers that the applicant's detention at Yerevan-Kentron detention facility from 21 December 2015 to 3 April 2017 amounted to a "continuing situation". As the applicant introduced his complaints on 16 September 2016 while still being detained in Yerevan-Kentron detention facility, he complied with the six-month rule in respect of his complaints concerning the entire duration of his stay in that facility (see, *mutatis mutandis*, *Ananyev and Others*, cited above, § 73). The Government's objection of non-compliance with the six-month time-limit should therefore be dismissed.

120. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

121. The applicant maintained that there was no effective domestic remedy available to him in respect of his complaints under Article 3 of the Convention in relation to the lack of requisite medical care and assistance in detention. He had continuously addressed requests to the administration of Yerevan-Kentron detention facility to enable him to undergo the necessary medical examinations but those requests were either refused or granted with undue delays. He had also sent letters to the Minister of Justice and the Penitentiary Service. The applicant argued that the Government had failed to demonstrate that there existed any effective mechanisms for detainees with serious health issues to be provided with redress if their right to adequate medical treatment or detention conditions were breached. As regards the possibility to claim non-pecuniary damages from the State, the applicant submitted that compensation under that head depended on a finding by the national courts of a breach of Article 3 of the Convention. In any event, monetary compensation could not be regarded as adequate redress for an ongoing violation of the right to requisite medical care and assistance.

122. The applicant further maintained that the administration of Yerevan-Kentron detention facility had failed properly to ensure his medical examinations and adequate medical treatment and that he had not received

the requisite medical attention or medication. As a result, he had been put in a life-threatening situation when the need for an urgent medical intervention arose. At some point he was obliged to refuse taking vital medication as a means of last resort in an attempt to draw the authorities' attention to the critical state of his health. Furthermore, he had been deprived of basic assistance in performing daily tasks in absolute disregard of his mobility issues and had to rely most of the time on the assistance of cell-mates, who were not always available. The applicant also complained of the authorities' failure during his stay in Yerevan-Kentron detention facility to provide him with a wheelchair, to ensure his personal hygiene and to provide him with daily walks in view of his problems with mobility. He further submitted that he was also deprived of adequate medical assistance in the Central Prison Hospital since no specialist in vascular surgery and angiology was available there.

(b) The Government

123. The Government submitted that the authorities had ensured the applicant's high-standard medical care with public funds, which went beyond what was required by the Court's jurisprudence on the matter. In particular, the applicant had been treated in civilian hospitals when necessary, was frequently examined by leading professionals in the country, including by specialists of his own choosing, and had remained under constant medical supervision. At the same time, on various occasions the applicant had refused to take the medication offered to him or to be examined by the medical personnel of the detention facility. The applicant had occasionally been offered the possibility to take a shower. However, since 12 August 2016 he had refused to take a shower, explaining that he was unable to stand and would only take a bath with the help of his wife. Regular bandaging of his lower limbs with elastic bandages had been carried out. From 3 April 2017 the applicant had been placed in the Central Prison Hospital. He was able to move independently and would occasionally use the wheelchair and the crutches provided to him by the detention facility. The Government submitted that, while in the Central Prison Hospital, the applicant was regularly assisted by the relevant personnel in performing everyday tasks.

124. In their further observations dated 28 February 2018 the Government submitted, *inter alia*, that at that point the applicant was being provided with a wheelchair round the clock. The Government stated that certain prescribed medication had been provided to the applicant by his relatives and averred that the authorities never created any obstacles to the applicant receiving medication from other sources.

2. The Court's assessment

(a) Exhaustion of domestic remedies and alleged violation of Article 13 of the Convention

(i) General principles

125. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17135/11 and 29 others, § 70, 25 March 2014).

126. The rule is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available to deal with the substance of an "arguable complaint" under the Convention and to provide appropriate relief. Moreover, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

127. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Vučković and Others*, cited above, § 77).

128. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law, in the sense of either preventing the alleged violation or its continuation, or providing adequate redress for any violation that has already occurred (see *Kudła*, cited above, §§ 157-58, and *Wasserman v. Russia* (no. 2), no. 21071/05, § 45, 10 April 2008).

129. Where the fundamental right to protection against torture and inhuman and degrading treatment is concerned, the preventive and compensatory remedies must be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3 of the Convention. Indeed, the particular importance attached by the Convention to that provision requires, in the Court's view, that the States Parties establish, over and above a compensatory remedy, an effective mechanism in order to put a rapid end to any such treatment. Were it otherwise, the prospect of future compensation would legitimise particularly severe suffering in breach of this core provision of the Convention (see *Ananyev and Others*, cited above, § 98).

In this context, the Court reiterates that for a person held in conditions incompatible with the requirements of Article 3 of the Convention, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under that Article. However, once the impugned situation has come to an end because this person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place (see *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 181, 27 January 2015).

(ii) Application of these principles to the present case

130. In the present case, according to the Government, the applicant had an effective domestic remedy at his disposal, namely that he could have lodged a complaint under Section 13 of the Law (see paragraph 113 above).

131. The Court observes that according to the above provision, a detainee has the right to lodge complaints concerning a violation of his rights with the administration of the detention facility, its superiors, the court, the Prosecutor's office, the Human Rights Defender, State and local self-governance bodies, non-governmental entities and political parties, the mass media, as well as international human rights protection bodies or organisations (see paragraph 94 above). While this provision mentions numerous authorities and bodies to which a detainee has the right to complain, the Government specifically argued that the applicant had failed to apply to the administration of the detention facility, the prosecutor and to a court (see paragraph 113 above).

132. The Court notes that it has already examined the effectiveness of the remedy suggested by the Government in several cases concerning inadequate conditions of detention and found it to be ineffective. The Court held, in particular, that the Government had failed to specify to which of the numerous authorities mentioned in Section 13 of the Law (see paragraph 94 above) the applicants were supposed to apply and what specific measures

could have been taken by those bodies to provide redress for the applicants' complaints taking into account that the issues raised were of a structural nature (see *Kirakosyan v. Armenia*, no. 31237/03, §§ 57-58, 2 December 2008; *Mkhitaryan v. Armenia*, no. 22390/05, § 43, 2 December 2008; and *Gaspari v. Armenia*, no. 44769/08, § 46, 20 September 2018). However, considering that the issues raised by the applicant in the present case are not of a structural nature and concern his personal situation, the Court finds it necessary to examine the effectiveness of the same domestic remedy in relation to the applicant's complaints concerning the quality of medical care and conditions of detention of persons requiring special assistance.

(1) Complaint to the administration of the detention facility

133. Section 13 of the Law establishes the detainees' right to complain to the administration of the detention facility about a violation of their rights (see paragraph 94 above). Furthermore, the Court observes that the authorities in charge of a detention facility have the primary responsibility for ensuring appropriate conditions of detention, including adequate health care for detainees. It follows that a complaint of inadequate medical care of and lack of requisite assistance to seriously ill detainees would necessarily call into question the way in which the administration of the detention facility had discharged its duty to ensure adequate health care for detainees (see *Reshetnyak v. Russia,* no. 56027/10, § 62, 8 January 2013; and *Gorbulya*, cited above, § 56).

134. Accordingly, the Court does not consider that the prison authorities would have a sufficiently independent standpoint to satisfy the requirements of Article 13 of the Convention (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61): in deciding on a complaint concerning conditions of detention or a detainee's medical care for which they themselves were responsible, they would in reality be judges in their own cause (see *Reshetnyak*, § 62; *Gorbulya*, § 56; and *Ananyev and Others*, § 101, all cited above).

(2) Complaint to the prosecutor

135. The Government did not specify the type of redress the applicant could have obtained for the alleged violation of his rights under Article 3 of the Convention by filing a complaint with a prosecutor.

136. Having said that, the Court observes that in the domestic legal system the prosecutor has the competence to oversee the lawfulness of the investigation and of the application of criminal penalties (see paragraphs 97 and 100 above).

137. In so far as overseeing the lawfulness of the investigation is concerned, the prosecutor has the competence to eliminate unlawful or unsubstantiated decisions of the body conducting the investigation and to

decide on the appeals against the latter's decisions and actions (see paragraph 98 above). However, in circumstances where complaints concerning the quality of the medical care and assistance provided to a seriously ill detainee relate to the acts or omissions of the administration of the detention facility and not to a specific decision or action (an act or omission) of the investigating body, there is nothing to suggest that a complaint to the prosecutor constitutes an effective remedy in respect of such complaints.

138. In so far as the prosecutor also has the function of overseeing the compliance by the prison authorities with the applicable legal regulations, the Court notes that in terms of Section 29 of the Law on the Prosecutor's Office, the prosecutor's competence is limited to merely requesting explanations from the relevant official (see paragraph 100 above).

139. In this context, the Court reiterates that a hierarchical complaint which does not give the person making it a personal right to the exercise by the State of its supervisory powers cannot be regarded as an effective remedy for the purposes of Article 35 of the Convention (see *Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII).

140. While the Court accepts the assertion that detainees may send their complaints against prison authorities to a prosecutor, it notes that there is in any event no legal requirement on the prosecutor to hear the complainant or ensure his or her effective participation in the ensuing proceedings, which would entirely be a matter between the supervising prosecutor and the supervised body, that is the relevant prison authority. In any event, the prosecutor has no legal duty under domestic law to decide on such a complaint (see paragraph 100 above). In addition, the complainant would not be a party to any proceedings and would only be entitled to obtain information about the way in which the supervisory body dealt with the complaint. Since the complaint to a prosecutor does not give the person using it a personal right to the exercise by the State of its supervisory powers, it cannot be regarded as an effective remedy (see *Reshetnyak*, cited above, § 64).

(3) Judicial complaint

141. The Government claimed that the applicant failed to lodge a proper judicial complaint in respect of his complaints under Article 3 of the Convention (see paragraph 113 above).

142. The Court observes that, as in the other Armenian cases cited above (see paragraph 132 above), in the present case the Government failed to specify which jurisdiction had the competence to examine complaints with regard to the lack of adequate medical care and assistance while in detention and most importantly the type of redress which could have been provided. Furthermore, it is not even clear whether, according to the Government, the applicant should have lodged a complaint with a court other than the one

deciding on the matter of his detention or make a separate complaint with the same court.

143. The Court notes that by virtue of Article 290 of the Code of Criminal Procedure the participants in the criminal proceedings whose rights and lawful interests have been violated are entitled to lodge judicial complaints against the unlawfulness and unfoundedness of the decisions and actions of the investigating and prosecuting authorities (see paragraph 99 above). It observes, however, that the Government did not submit any examples from domestic case-law to illustrate that a detainee had been able to vindicate his or her rights by having recourse to this remedy in the context of acts or omissions of the authorities in charge of a detention facility in relation to the health care and conditions of detention of detainees requiring special assistance. The Court is therefore unable to conclude that the effectiveness of this remedy has been demonstrated.

(4) Claim for compensation of non-pecuniary damage

144. Lastly, the Government argued that the applicant could have claimed compensation for non-pecuniary damage from the State. The Court observes in this regard that following legislative amendments which entered into force on 1 November 2014, the Civil Code provides for a possibility to claim compensation for non-pecuniary damage for violations of rights guaranteed under the Convention, including the rights protected by Article 3 of the Convention (see paragraphs 103, 104 and 106 above).

145. The Court notes that the newly-introduced Article 162.1 of the Civil Code states that a person may claim compensation for non-pecuniary damage from the State if a violation has been established by the prosecuting authority or a court (see paragraph 103 above), while the newly-introduced Article 1087.2 of the same Code (see paragraph 104 above), which sets out the relevant procedure, provides that a claim for compensation for non-pecuniary damage may be submitted to a court together with a claim seeking to establish a breach of the rights guaranteed by the Convention. However, the Government have not provided any example of cases in which a court has considered both the question of violation of a person's Convention right and non-pecuniary damages together and current practice still appears to be that an award is conditional on the prior establishment of the breach of the person's rights by the prosecuting authority or a court. In any event, as noted above, it has not been demonstrated in the present case that there exists a clear procedure for lodging judicial complaints concerning inadequate health care and conditions of detention of detainees requiring special assistance (see paragraphs 142 and 143 above). Hence, it is not clear which jurisdiction would have the competence to establish a breach of Article 3 of the Convention on account of the lack of adequate medical care and assistance while in detention and to examine a claim for compensation for non-pecuniary damage stemming from that breach.

Consequently, the Court finds that this remedy could not offer reasonable prospects of success to the applicant. This finding is further reinforced by the fact that the Government did not provide any example of domestic case-law in which compensation for non-pecuniary damage was awarded with respect to complaints concerning lack of adequate medical treatment and quality of care for seriously-ill detainees.

146. In any event, as noted above, the availability of a compensatory remedy alone would not have been sufficient considering that the applicant was still in detention when he lodged his application (see paragraph 129 above).

(5) Conclusion

147. In view of the foregoing, the Court concludes that none of the legal avenues put forward by the Government constituted an effective remedy that could have been used to prevent the alleged violations or their continuation and provide the applicant with adequate and sufficient redress for his complaints under Article 3 of the Convention.

148. Accordingly, the Court finds that the applicant did not have at his disposal an effective domestic remedy for his complaints, in breach of Article 13 of the Convention, and dismisses the Government's objection of non-exhaustion of domestic remedies.

(b) Alleged violation of Article 3 of the Convention

(i) General principles

149. The relevant principles with respect to medical care to be provided to persons deprived of their liberty have been summarised in paragraphs 135-37 of the Court's judgment in *Blokhin v. Russia* ([GC], no. 47152/06, 23 March 2016).

150. On the whole, the Court reserves sufficient flexibility in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

151. As regards cases concerning detainees with disabilities, the Court has considered that where the authorities decide to place and keep a disabled person in detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from his disability (see, for example, *Z.H. v. Hungary*, no. 28973/11, § 29, 8 November 2012, and *Jasinskis v. Latvia*, no. 45744/08, § 59, 21 December 2010).

152. The Court has also found that leaving a person with a serious physical disability to rely on his cellmates for assistance with using the toilet, bathing and getting dressed or undressed, contributed to the finding

that the conditions of detention had amounted to degrading treatment (see *D.G. v. Poland*, no. 45705/07, § 177, 12 February 2013; *Helhal v. France*, no. 10401/12, § 62, 19 February 2015; and *Topekhin v. Russia*, no. 78774/13, § 86, 10 May 2016).

153. Lastly, allegations of ill-treatment must be supported by appropriate evidence. An unsubstantiated allegation that medical care has been non-existent, delayed or otherwise unsatisfactory is normally insufficient to disclose an issue under Article 3 of the Convention. A credible complaint should normally include, among other things, sufficient reference to the medical condition in question; the medical treatment that was sought, provided, or refused; and some evidence – such as expert reports – which is capable of disclosing serious failings in the applicant's medical care (see *Krivolapov v. Ukraine*, no. 5406/07, § 76, 2 October 2018, with further references).

(ii) Application of these principles to the present case

(1) Medical treatment

154. The Court notes that the applicant had health issues, particularly arterial problems, prior to his admission to Yerevan-Kentron detention facility (see paragraphs 6 and 14 above). It further notes that during the applicant's stay in that detention facility his health condition apparently deteriorated. In particular, when examined by a neurologist on 11 August 2016 the applicant was diagnosed with multifocal brain damage, vascular encephalopathy and gross impairment of coordination and his placement in a specialist medical establishment was considered necessary (see paragraph 43 above).

155. The applicant made a number of very detailed complaints with regard to the deficiencies in the organisation of his medical treatment during his stay in Yerevan-Kentron detention facility. He complained in more general terms of the lack of specialist care in the Central Prison Hospital (see paragraph 122 above).

156. The Court observes that during his stay in Yerevan-Kentron detention facility, which lasted more than fifteen months – from 21 December 2015 until 3 April 2017 (see paragraphs 14 and 64 above), the applicant's medical care was to be organised through visits by relevant specialists and through medical examinations in specialist civilian hospitals. At the same time, no specialist care was available to the applicant after his placement in the Central Prison Hospital either as was confirmed by the Ombudsman in the decision of 10 November 2016 (see paragraph 48 above).

157. As regards specifically the applicant's contention that the failure by the administration of Yerevan-Kentron detention facility to organise his prompt and accurate diagnosis and treatment resulted in a life-threatening

condition for him, the Court cannot speculate on whether, as argued by the applicant (see paragraph 122 above), the emergency situation which arose in March 2016 (see paragraph 33 above) was directly attributable to the authorities' failure in their duty to ensure proper medical care for the applicant. At the same time, the Court cannot overlook the notable delays in organising the applicant's medical examinations and in the follow up on the requests of urgent medical intervention of 30 January and 8 February 2016 (see paragraphs 25 and 27 above). In addition, notwithstanding the drastic deterioration of the applicant's health, the duplex scan of the lower limbs that had been recommended by a surgeon on 2 February 2016 (see paragraph 28 above) was only carried out on 15 February 2016 (see paragraph 29 above). Furthermore, following the applicant's request of 10 March 2016 to be seen by his doctor, the latter was allowed to visit him only on 17 March 2016 (see paragraphs 31 and 32 above) whereas already on 18 March 2016 the applicant's emergency hospitalisation became necessary (see paragraph 33 above).

158. The Court takes note that the deficiencies in the manner in which the applicant's medical care was organised in Yerevan-Kentron detention facility were acknowledged by the Ombudsman as well as by the Public Observers Group both of which considered the applicant's medical treatment there to be inadequate and requested his transfer to a specialist hospital (see paragraphs 48 and 53 above). However, the applicant was only admitted for in-patient treatment in a civilian hospital on 23 February 2017 following a request of information from the Court in relation to the applicant's request for an interim measure (see paragraphs 56, 57, 79 and 80 above).

159. As pointed out by the Government (see paragraph 123 above), there is indeed ample evidence in the case file that the applicant was visited by a number of specialists, including his treating doctors or leading specialists in the fields of vascular surgery, cardiology and neurology and that on various occasions the authorities organised the applicant's medical examinations in civilian specialist clinics (see, for example, paragraphs 29, 39 and 41 above). However, the mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). In the Court's opinion the Government failed to demonstrate that the authorities ensured that a comprehensive therapeutic strategy aimed at adequately treating the applicant's health problems or preventing their aggravation was put in place. Furthermore, the delays in organising the prescribed medical examinations in due time (see, for instance, paragraph 157 above as regards the delays in organising the applicant's urgent medical examinations as well as paragraphs 39 and 41 above when the MRT examination prescribed by the applicant's doctor was carried out almost a month later) and the

acknowledged failure to provide the entirety of the prescribed medication (see paragraphs 63 and 124 above) show that the necessary conditions were not created for the prescribed treatment to be actually followed through.

160. Thus, having regard to the lack of systemic and comprehensive treatment of the applicant's special health needs, the authorities' failure to ensure the timely organisation of the applicant's medical examinations and to provide him with the prescribed medication, the Court finds that the applicant was not provided with requisite medical care while in detention.

(2) Quality of care

– *Daily assistance*

161. The Court notes that the applicant did not make any specific complaints about the manner in which his assistance was organised after his transfer to the Central Prison Hospital (see paragraphs 64 and 122 above).

162. In so far as the period preceding the applicant's transfer to the Central Prison Hospital is concerned, the Court observes that the Government did not specifically challenge the applicant's account that during his stay in Yerevan-Kentron detention facility he depended exclusively on his cell-mates in performing his daily tasks, including getting out of the bed, getting dressed and going to the toilet (see paragraphs 81 and 123 above). While the Government in general terms stated that the applicant was being assisted (see paragraph 81 above), they failed to provide any details and to submit any evidence to support that claim.

163. The Court notes that the fact that the applicant's care during the entire period of his stay in the Yerevan-Kentron detention facility had been ensured by his cell-mates was expressly acknowledged by the Ombudsman in the decision of 10 November 2016 (see paragraph 48 above).

164. The Court has already criticised schemes whereby a prisoner with a physical disability is provided routine assistance by his fellow inmates (see paragraph 152 above), and considered that that must have given rise to considerable anxiety on the applicant's part and placed him in a position of inferiority vis-à-vis the other prisoners (see, among many other authorities, *Farbtuhs v. Latvia*, no. 4672/02, § 60, 2 December 2004).

165. In the context of the applicant's need for special assistance in view of his moving difficulty linked primarily to the vascular problems in his lower limbs (see paragraph 58 above), the Court finds it striking that the authorities even refused such a basic request as that to be provided with a wheelchair which had been submitted by the applicant on 9 February 2017 (see paragraph 54 above). It was not until the Government filed their further observations on 28 February 2018 that they stated that the applicant was being provided with a wheelchair on a constant basis (see paragraph 124 above).

– *Hygiene*

166. The Court has held that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining the inmates' sense of personal dignity (see *Ananyev and others*, cited above, § 156).

167. The Court observes that the applicant had not been able to take a shower from 12 August 2016, the date when, as acknowledged by the authorities, he had last taken a shower in Yerevan-Kentron detention facility (see paragraph 52 above) until 23 February 2017 when he was admitted to Erebouni Medical Centre (see paragraph 57 above).

168. The Government claimed that the applicant had himself refused to take a shower stating that he would only take a bath with the help of his wife (see paragraphs 81 and 123 above). On the other hand, the applicant maintained that he had been unable to take the steps to the basement where the shower rooms were situated (see paragraph 82 above).

169. The Court notes that the Government did not produce any records or other evidence to support their submissions. It finds therefore that the strikingly long period when the applicant was deprived of the possibility to take a shower was due to the failure of the personnel of the Yerevan-Kentron detention facility to provide him with proper assistance in maintaining personal hygiene.

– *Outdoor exercise*

170. The Government did not contest the applicant's account that in the Yerevan-Kentron detention facility he had been deprived of the opportunity for outdoor exercise for months due to his moving difficulty.

171. The Court reiterates that special attention must be paid to the availability and duration of outdoor exercise and its conditions when making an assessment of the conditions of detention. In the *Ananyev and others* case (cited above, §§ 150-52) the Court has referred to the relevant CPT standards according to which all prisoners, without exception, must be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities, bearing in mind that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather.

172. The Court observes that the outdoor exercise in the Yerevan-Kentron detention facility is, according to the CPT, organised in small yards on the roof of the building (see paragraph 107 above). Hence, the applicant would clearly not have been able to reach the outdoor exercise facilities without relevant assistance being provided to him.

(3) Conclusion

173. In view of the foregoing, the Court finds that, while in detention in the Yerevan-Kentron detention facility, the applicant was not provided with

adequate medical treatment as required by his state of health. Furthermore, the applicant was not provided with the requisite assistance in performing daily tasks and maintaining personal hygiene nor with an adequate opportunity for outdoor exercise while detained in the Yerevan-Kentron detention facility. In the Court's view the cumulation of those factors resulted in the applicant having been exposed to prolonged mental and physical suffering which went beyond the unavoidable level of suffering inherent in detention.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

175. The applicant complained that the domestic courts had failed to provide relevant and sufficient reasons for his detention. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

176. The Government submitted that the applicant had failed to exhaust the domestic remedies and observe the six-month time-limit, as required by Article 35 § 1 of the Convention. Firstly, they argued that the applicant had failed to contest the detention order of 21 December 2015 (see paragraph 13 above) before the Court of Cassation. Secondly, he failed to lodge a timely appeal on points of law against the decision of 14 February 2016 whereby his detention had been extended for a further two-month period (see paragraph 18 above). The Government then argued that the six-month time-limit in respect of the applicant's complaints concerning his continued detention should be calculated from the decisions of the Criminal Court of Appeal of 22 January and 12 March 2016 (see paragraphs 16 and 19 above) had the applicant considered that lodging an appeal on points of law was not an effective remedy. Since the applicant had applied to the Court only on 16 September 2016, he had failed to respect the six-month time-limit.

177. The applicant submitted that an appeal to the Court of Cassation was not an effective remedy and that he had complied with the six-month time-limit as he had introduced his complaint while he was still under pre-trial detention.

178. As regards the Government's argument regarding the applicant's failure to lodge an appeal on points of law with the Court of Cassation, the

Court notes that it has already examined and dismissed a similar objection of non-exhaustion in other cases against Armenia (see *Arzumanyan v. Armenia*, no. 25935/08, §§ 28-32, 11 January 2018; *Jhangiryan v. Armenia*, nos. 44841/08 and 63701/09, § 76, 8 October 2020; and *Smbat Ayvazyan v. Armenia*, no. 49021/08, § 78, 8 October 2020). Considering that the Government did not advance any new arguments, the Court sees no reasons in the present case to depart from its earlier findings. It therefore dismisses the Government's objection of non-exhaustion.

179. As regards the Government's objection regarding the applicant's failure to respect the six-month time-limit, the Court reiterates that the period to be taken into consideration in so far as detention pending trial is concerned begins on the day the accused is taken into custody and ends when he or she is released and/or the charge is determined, even if only by a court of first instance (see, among many other authorities, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 290, 22 December 2020). The Court notes that the applicant's detention pending trial started on 21 December 2015 (see paragraph 13 above) and ended on 25 June 2018 (see paragraph 91 above) while the applicant introduced his application on 16 September 2016. It therefore finds that the applicant complied with the six-month rule in respect of his complaints relating to the entire period of his detention on remand. Accordingly, the Government's objection in this respect should be dismissed as well.

180. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

181. The applicant submitted that the domestic courts had failed to provide relevant and sufficient reasons when ordering and extending his detention, in violation of Article 5 § 3 of the Convention.

182. The Government argued that the courts had provided relevant and sufficient reasons for the applicant's detention, such as the risk of absconding and obstructing the proceedings.

183. The Court refers to its general principles under Article 5 § 3 of the Convention relating to the right to be released pending trial (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 92-102, 5 July 2016; *Ara Harutyunyan v. Armenia*, no. 629/11, §§ 48-53, 20 October 2016) and notes that it has already found the use of stereotyped formulae when imposing and extending detention to be a recurring problem in Armenia (see, among other examples, *Piruzyan v. Armenia*, no. 33376/07, §§ 97-100, 26 June 2012; *Malkhasyan v. Armenia*, no. 6729/07, §§ 74-77, 26 June 2012; *Sefilyan v. Armenia*, no. 22491/08, §§ 88-93, 2 October 2012; and *Ara Harutyunyan*, cited above, §§ 54-59).

184. In the present case, the domestic courts similarly justified the applicant's continued detention with a mere citation of the relevant domestic provisions and a reference to the gravity of the imputed offence (see paragraphs 13, 18, and 21 above) without addressing the specific circumstances of the applicant and his case or providing any details as to on what basis the asserted risks of absconding and obstructing justice were and continued to be justified.

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

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

186. The applicant complained that the authorities' refusal to allow private meetings with his representatives before the Court had violated his right to individual application. He relied on Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

187. Furthermore, in his letter of 10 January 2018 the applicant claimed that the Government had failed to comply with the interim measure indicated by the Court on 9 November 2017 under Rule 39 of the Rules of Court (see paragraphs 85 and 87 above).

188. Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.
>
> 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
>
> 3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.
>
> 4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures."

A. The parties' submissions

189. The applicant submitted that it was only on 16 August 2017, following the District Court's decision of the same date whereby a request to that end had been granted, that he had been able to have a confidential

meeting with one of his representatives, Ms Maralyan. The procedure pointed out by the District Court whereby he should have complained about the prohibition to have a private meeting with his representative before the Court to the investigating authority, the administration of the detention facility and then to the prosecutor was ineffective in view of the urgent nature of his request.

190. The Government claimed that the applicant had failed to exhaust the domestic remedies for his complaint under Article 34. In particular, he had failed to appeal the decision of the NSS refusing Ms Maralyan a private meeting with him to the prosecutor and to the court. Had the applicant followed the correct procedure by appealing the investigator's decision to the prosecutor and then to the court, he could have achieved the expected result. The Government argued that the refusal to allow private meetings with the applicant's representatives was in line with the requirements of Section 15 of the Law. In any event, the applicant had been granted a non-private meeting with Ms Maralyan on 31 August 2016 and he had had several meetings with his other representatives without any obstacles.

As for the refusal to allow Ms Moskalenko to have a private meeting with the applicant, the Government submitted that she had failed to produce documentary proof that she had been the applicant's representative before the Court and that she had a licence to practise in Armenia. Furthermore, it was the investigating authority and not the administration of the detention facility which was competent to grant the relevant permission.

B. The Court's assessment

1. General principles

191. The Court reiterates that, pursuant to Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, and this has been consistently reaffirmed as a cornerstone of the Convention system (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 102, ECHR 2005-I).

192. Although the object of Article 34 is essentially that of protecting an individual against any arbitrary interference by the authorities, it does not merely compel States to abstain from such interference. In addition to this primarily negative undertaking, there are positive obligations inherent in Article 34 requiring the authorities to furnish all the necessary facilities to make possible the proper and effective examination of applications. Such an obligation will arise in situations where applicants are particularly vulnerable (see *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010; *Savitskyy v. Ukraine*, no. 38773/05, § 156, 26 July 2012; and *Iulian Popescu v. Romania*, no. 24999/04, § 33, 4 June 2013).

193. It is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, §§ 115-16, ECHR 2007-I; *McShane v. the United Kingdom*, no. 43290/98, § 149, 28 May 2002 and the cases cited therein). In this context, "any form of pressure" includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or communication designed to dissuade or discourage applicants from pursuing a Convention complaint, or having a "chilling effect" on the exercise of the right of individual petition of applicants and their representatives (see *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 177, 17 March 2016 and the cases cited therein).

194. The fact that an individual has managed to pursue his application does not prevent an issue arising under Article 34. Should a government's actions make it more difficult for an individual to exercise his right of petition, this may amount to "hindering" his rights under Article 34 (ibid., § 178). The intentions or reasons underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with; what matters is whether the situation created as a result of the authorities' act or omission conforms to Article 34 (see *Paladi v. Moldova* [GC], no. 39806/05, § 87, 10 March 2009). Moreover, the Court must assess the vulnerability of the complainant and the risk of his being influenced by the authorities. An applicant's position might be particularly vulnerable when he is held in custody with limited contact with his family or the outside world (see *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003).

195. According to the Court's established case-law, since interim measures provided for by Rule 39 are indicated by the Court for the purpose of ensuring the effectiveness of the right of individual petition, a respondent State's failure to comply with such measures entails a violation of the right of individual application (see *Mamatkulov and Askarov*, § 125, and *Paladi*, § 88, both cited above).

2. Application of these principles to the present case

(a) Prohibition of private meetings with representatives before the Court

196. The applicant complained that the impossibility of meeting in private with his representatives before the Court had amounted to a violation of the respondent State's obligation not to hinder the effective exercise of his right to individual petition.

197. The Government argued that the applicant had failed to exhaust the domestic remedies that were available to him for his complaint under

Article 34 in that he did not complain to the investigating and prison authorities as well as to the prosecutor about the prohibition of his private meetings with his representatives (see paragraph 189 above). The Court reiterates in this connection that, according to its case-law, a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Ergi v. Turkey*, 28 July 1998, § 105, Reports 1998-IV, and *Ryabov v. Russia*, no. 3896/04, § 56, 31 January 2008).

198. The Court observes that on several occasions the applicant's authorised representatives in the proceedings before the Court (see paragraphs 66 and 74 above) were refused permission to have private meetings with him in Yerevan-Kentron detention facility and then in the Central Prison Hospital (see paragraphs 67, 69, 72, 76 and 77 above). The Court further observes that the applicant was allowed to have a private meeting with Ms Maralyan for the first time on 16 August 2017 (see paragraph 78 above). Therefore, the issue before the Court is whether the impediments to confidential communication between the applicant and his representatives put in place by the prison and investigating authorities and lasting a little more than a year amounted to a violation of the respondent State's obligation not to hinder the effective exercise of the right of petition under Article 34 of the Convention.

199. In this connection, the Court observes that in the past it has found violations of the right of petition under Article 34 of the Convention in circumstances where an applicant in detention had been prevented from communicating freely with his representative before the Court. For instance, the Court considered that Article 34 of the Convention had been breached where an applicant had not been allowed to meet in private with his lawyer and had been separated from him by a glass partition (see *Cebotari v. Moldova*, no. 35615/06, §§ 58-68, 13 November 2007) or where an applicant's lawyers in the proceedings before the Court had been unable to present their observations due to the lack of access to the applicant and to his medical file (see *Boicenco v. Moldova*, no. 41088/05, §§ 157-59, 11 July 2006). The Court has, however, accepted that compliance by a representative with certain formal requirements might be necessary before obtaining access to a detainee, for instance for security reasons or in order to prevent collusion or some other action to pervert the course of the investigation or justice (see *Melnikov v. Russia*, no. 23610/03, § 96, 14 January 2010). At the same time, excessive formalities in such matters, such as those that could *de facto* prevent a prospective applicant from effectively enjoying his right of individual petition, have been found to be unacceptable (see *Zakharkin v. Russia*, no. 1555/04, §§ 152-60, 10 June 2010, where an applicant's contact with his representative before the Court had been restricted on the grounds that the representative was not a professional advocate). By contrast, where the domestic formalities were easy to comply

with, no issue arose under Article 34 (see *Lebedev v. Russia*, no. 4493/04, § 119, 25 October 2007).

200. The Court further notes that in the case of *S. v. Switzerland* (no. 12629/87, § 48, 28 November 1991) the Court has found that an accused's right to communicate with his lawyer out of hearing of a third person was part of the basic requirements of a fair trial in a democratic society and followed from Article 6 § 3 (c) of the Convention. The Court drew support for this conclusion from Article 93 of the Standard Minimum Rules for the Treatment of Prisoners, annexed to Resolution (73) 5 of the Committee of Ministers (now Article 23 of Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, see paragraph 109 above), and Article 3 § 2 of the Agreement Relating to Persons Participating in Proceedings of the Court. The latter, of course, expressly provides for a right of detained persons to correspond and consult out of hearing of other persons with a lawyer in regard to an application to the Court and the proceedings resulting therefrom (see paragraph 110 above, and *S. v. Switzerland*, cited above, § 48). While the Court is aware that Armenia has neither signed nor ratified this Agreement, the Court has repeatedly made clear that it is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of a specific subject matter. It will be sufficient for the Court that the relevant international instruments denote a continuous evolution in the norms and principles applied in international law and show, in a precise area, that there is common ground in modern societies (see, *mutatis mutandis*, *Demir and Baykara v. Turkey* [GC], §§ 85-86, ECHR 2008).

201. The Court observes that, when making requests to meet with the applicant in private, Ms Maralyan and Ms Moskalenko had clearly stated that their requests related to the applicant's pending case before the Court (see paragraphs 68 and 76 above). The domestic authorities, however, repeatedly refused to allow such meetings for various reasons (see paragraphs 67, 69, 72 and 76 above) at times with reference to very formalistic requirements (see, in particular, paragraph 76 above). The Court further notes that it was never alleged that meetings between the applicant and his representatives before the Court, Ms Maralyan and Ms Moskalenko, might present any security risk or a risk of collusion or perversion of the course of justice.

202. The Court observes that, although the domestic law does not provide for any special rules regarding detainees receiving visits from their representatives before the Court, it also does not limit such visits only to defence lawyers in the domestic criminal proceedings. In particular, the applicable domestic law specifically provides that detainees also have the right to meet with persons other than advocates who are authorised to provide them with legal assistance (see paragraph 95 above). While that

right is subject to authorisation of the investigating authority, as stated above, when refusing the relevant requests it was never alleged that the meetings between the applicant and his representatives before the Court contained any security risk or a risk of collusion or perversion of the course of justice. Despite that, the applicant was not allowed to have private meetings with his representatives before the Court for a prolonged period of time, and was unable to give confidential instructions to them during important steps in the procedure such as, for instance, when preparing his application (see paragraphs 67, 69, 72 and 74 above), in which circumstances his legal assistance had lost much of its usefulness.

203. The Court makes the above finding irrespective of the fact that the applicant's representatives were eventually able to submit to the Court a very detailed application and subsequent submissions. The Court notes in this connection that a failure by the respondent Government to comply with their procedural obligation under Article 34 of the Convention does not necessarily require that the alleged interference should have actually restricted, or have had any appreciable impact on, the exercise of the right of individual petition. The Contracting Party's procedural obligations under Articles 34 and 38 of the Convention must be enforced irrespective of the eventual outcome of the proceedings, and in such a manner as to avoid any actual or potential chilling effect on the applicants or their representatives (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 209, ECHR 2013).

204. In so far as the Government suggested that the applicant and his representatives in the proceedings before the Court had failed to make use of the correct procedure firstly by failing to obtain the necessary permission from the investigating authority and then by failing to seek judicial review of the relevant decisions (see paragraph 189 above), the Court observes that the authorities were not consistent with regard to the procedure to be followed and the reasons for refusing to grant the permission sought. In particular, the administration of Yerevan-Kentron detention facility referred Ms Maralyan to the investigator in order to seek the relevant permission whereas the investigator stated that he had no authority to grant it (see paragraphs 67 and 69 above). Thereafter, when refusing Ms Maralyan's further request, the administration of the detention facility referred to the fact that she had allegedly failed to provide documentary proof that she was the applicant's representative before the Court and stated that the applicant had the right to meet in private only with his defence lawyer or a lawyer who was to assume his defence in the domestic proceedings (see paragraph 72 above). Lastly, the District Court in its turn pointed out to yet another procedure according to which the applicant should have applied to the prosecutor, the administration of the detention facility and only then seek judicial review (see paragraph 71 above). While appealing the investigator's decision to the prosecutor and, in case of refusal, seeking judicial review

appears to be in line with the domestic law (see paragraphs 97, 98 and 99 above), the legal basis for the District Court's conclusion requiring the applicant to apply to the administration of the detention facility remains unclear especially in view of the Government's argument that the permission to have a private meeting with the applicant should have been sought from the investigating authority and not from the administration of the detention facility (see paragraph 189 above). In any event, the Court considers that the applicant's representatives could not be expected to engage in lengthy appeal procedures before various instances, as appears to be suggested by the Government, every time it had become necessary to meet with the applicant in private to discuss his case pending before the Court.

205. Lastly, in so far as the Government averred that Ms Moskalenko's request to have a private meeting with the applicant was refused also for the fact that she had failed to provide proof that she was a practising lawyer in Armenia (see paragraph 189 above), the Court observes that according to Rule 36 § 4 (a) of the Rules of Court an applicant can be represented by an advocate authorised to practise in any of the Contracting Parties and resident in the territory of one of them.

206. In view of the foregoing, the Court considers that the restriction of the applicant's contacts with his representatives before the Court constituted an interference with the exercise of his right of individual petition which is incompatible with the respondent State's obligations under Article 34 of the Convention. The Court therefore concludes that the respondent State failed to comply with its obligations under Article 34 of the Convention.

(b) Compliance with the interim measure indicated by the Court

207. The Court notes that the interim measure indicated in the present case on 9 November 2017 included instructions to the authorities to immediately provide the applicant with the requisite medical assistance including, if necessary, his placement in a specialist medical facility and to set up a medical panel on a parity basis to examine the applicant with a view to diagnosing his specific problems and determining the necessity of any long-term or immediate treatment (see paragraph 85 above).

208. The Court observes that in his letter of 10 January 2018 the applicant argued that the respondent Government had failed to comply with the applied interim measure (see paragraph 87 above). The Court considers that, in principle, this amounts to raising a new and distinct complaint under Article 34 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 135, 20 March 2018).

209. Having said that, the Court notes that the applicant did not pursue thereafter this complaint and did not provide any further information in support of the alleged non-compliance by the Government with the indicated interim measure (see paragraph 90 above).

210. On the other hand, the Court finds it striking that the Government sought to justify their ignorance of the interim measure indicated by the Court by reference to a "technical discrepancy" (see paragraphs 89 and 189 above). However, the Government has at no point raised any technical issues in relation to the electronic communication system with the Court. In circumstances where the Court has an established means of communication with the respective Governments, this type of argument submitted to justify the alleged lack of knowledge of the Court's correspondence with regard to a given case, absent any evidence that the technical difficulty had promptly been brought to the attention of the Court and its IT services with a view to their swift resolution, are wholly unacceptable. That is particularly so as the Court relies, as it did in this case, on these established means of communication for the purposes of notifying, *inter alia*, urgent indications of an interim measure under Rule 39.

211. At the same time, as noted above, the applicant failed to provide the Court with any information with regard to the quality of medical care provided to him after the exchanges in January and February 2018 on which this complaint appeared to be based (see paragraphs 87, 89 and 90 above). Hence, the Court finds that there is no sufficient basis for it to conclude that the State failed to discharge its obligations under Article 34 of the Convention in so far as the compliance with the indicated interim measure is concerned.

212. Consequently, the respondent State has not failed to comply with its obligations under Article 34 of the Convention in this respect.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

213. 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

214. The applicant claimed 80,000 euros (EUR) in respect of non-pecuniary damage.

215. The Government contested the applicant's claim.

216. The Court, making its assessment on an equitable basis, considers it reasonable to award the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

217. The applicant also claimed EUR 18,500 and AMD 6,753,500 for the costs and expenses incurred before the domestic courts and the Court.

218. The Government argued that the applicant's claims under this head were not substantiated in that the submitted receipts did not contain any information about the purpose of the relevant payments while some claims were not supported by any documentation. In addition, the applicant had failed to submit any itemised and detailed bills to support the legal costs claimed. Finally, no explanation had been provided for the involvement of such an excessive number of lawyers both at domestic level and in the proceedings before the Court.

219. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's objection relating to the exhaustion of domestic remedies in respect of the applicant's complaints under Article 3 to the merits of his complaint under Article 13 and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy in respect of the applicant's complaints under Article 3 of the Convention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the quality of medical treatment and care provided to the applicant while under detention;

5. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the domestic courts' failure to provide relevant and sufficient reasons for the applicant's detention;

6. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention on account of the prolonged refusal of the applicant's private meetings with his representatives before the Court;

7. *Holds* that the respondent State has not failed to comply with its obligations under Article 34 of the Convention on account of its alleged failure to comply with the interim measure indicated by the Court;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, 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;

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

Done in English, and notified in writing on 22 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Yonko Grozev President