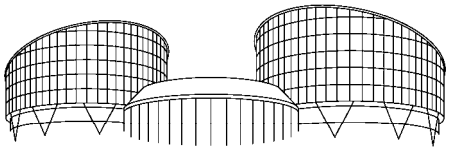

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MATEVOSYAN v. ARMENIA

(Application no. 52316/09)

JUDGMENT

STRASBOURG

14 September 2017

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 Matevosyan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Aleš Pejchal,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 11 July 2017,

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

PROCEDURE

1. The case originated in an application (no. 52316/09) 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 Alik Matevosyan ("the applicant"), on 24 September 2009.

2. The applicant was represented by Mr H. Baghdasaryan, a lawyer practising in Herher. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicant alleged, in particular, that the authorities had failed to conduct an effective investigation into his allegations of ill-treatment by military police officers.

4. On 15 May 2012 the complaint concerning the alleged ineffectiveness of the investigation was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1987 and was serving a prison sentence in Nubarashen penal facility (see paragraph 27 below) at the time when he lodged his application with the Court.

6. On an unspecified date the applicant was drafted to the Armenian army. At the material time he was performing his military service in the Syunik Region of Armenia.

7. On 29 April 2006 the dead body of a fellow serviceman, A.H., was found in the forest next to the applicant's military unit. He was hanging from a tree with his arms tied behind his back with wire. On the same day the military prosecutor's office of Zangezur garrison instituted criminal proceedings in respect of the death. Shortly afterwards the investigation of the case was taken over by the Military Prosecutor's Office and assigned to investigator A.K.

8. According to the materials of the case, on 2 May 2006 the applicant was questioned in the town of Kapan in connection with the criminal case. It appears that on the same day he and another serviceman, R.H., were subjected to disciplinary punishment in the form of ten days' detention for beating up A.H. the previous month. It further appears that the following day the applicant and R.H. were taken to the Military Police Department of the Ministry of Defence in Yerevan ("the Military Police Department"), where they were held until 12 May 2006.

9. During their detention at the Military Police Department, the applicant and R.H. were questioned as witnesses in the criminal case. It appears that during questioning on 7 May 2006, R.H. confessed that he and the applicant had murdered A.H.

10. On an unspecified date the head of the disciplinary isolation facility of the Military Police Department addressed the following letter to investigator A.K.:

> "Pursuant to your oral enquiry, we inform you that ... [the applicant] was admitted to the detention facility of the Military Police Department on 3 May 2006 and stayed there until 12 May 2006 after which he was transferred to military unit no. 20440 of the Ministry of Defence ... Upon his admission, during his stay and upon his discharge he had no bodily injuries, and no complaints with regard to his state of health had been received."

11. On 17 May 2006 investigator A.K. drew up a record of the applicant's arrest, which stated that the applicant had been arrested on that day in the Military Police Department on suspicion of beating up and murdering A.H. On the same day he asked the Public Defender's Office to grant the applicant a defence lawyer, who was assigned the next day.

12. On 20 May 2006 the applicant was charged with aggravated breach of military discipline rules and aggravated murder, under Article 359 § 2 and Article 104 § 2 (10) of the Criminal Code. In particular, the investigator found that in March 2006 the applicant, together with R.H., had subjected A.H. to beatings and, on 28 April 2006, had murdered him by hanging him from a tree.

13. On the same day the applicant was taken to the Arabkir and Kanaker-Zeytun District Court of Yerevan. At the request of investigator A.K., the court ordered his remand in custody.

14. The applicant contested the facts as reflected in the materials of the case file, and alleged that in reality he was taken to the Kapan Military Police Department on 1 May 2006 and was held there until 3 May 2006. Thereafter, he was taken to the disciplinary isolation facility of the Military Police Department, where he was held until 20 May 2006. Throughout the whole period he was subjected to severe beatings and torture by military police officers and investigators, who hit him in the soft parts of the body, as well as the "invisible" parts, including the soles of the feet, forcing him to confess to the murder. No legal representative was allocated to him at that time. R.H. and another serviceman who had been taken to the Military Police Department in connection with the death of A.H. were beaten too. R.H. was unable to withstand the beatings and made confession statements.

15. On 21 June 2006, while in the Nubarashen detention facility, the applicant lodged a complaint with, *inter alia*, the General Prosecutor's Office, stating as follows:

> "... On 1 May this year military police officers came to the military outpost and took me [and two other soldiers] to the [military police] department. They took statements from us there and started to beat us. At night [R.H.] and I were kept in the reception area, sitting on the floor with our hands handcuffed to the walls. I was there until 3 May, during which time I witnessed only beatings and cries from different rooms where the soldiers were being beaten. On 3 [May], we, 11 soldiers, were brought to the Military Police Department and I was taken to the room of [a senior officer, A.M.] where they started continuously to beat me, now with more brutal methods. They took off my shoes and with a thin branch started to beat the soles of my feet. They were forcing me to give false incriminatory statements. Late at night they would take me to the disciplinary isolation cell. [Several other co-servicemen] were also kept there, while the rest stayed in a common room. About 10 days later, when I was being questioned as a witness, the investigator took off my shoes. I should mention that I was kept in the isolation cell unlawfully, upon an order from the superior. I was held for 10 days for violation of the internal disciplinary code. Every day they would take me to a room and try, by beatings and threats, to force me to give evidence in the way they wanted. At 1 a.m. on 17 or 18 May the investigator came and told me that my girlfriend was in the next room and that if I refused to testify in the way he wanted, bad things would happen to her. They further threatened me that bad things would also happen to my 17-year-old sister. The head of the [operational intelligence] department [M.Gh.] and his deputy [A.Mar.] would also beat me. When I was not able to eat because my teeth were aching from many punches and slaps, they threatened me and used indecent swearwords. One night, as I was being taken back to the isolation cell [the isolation facility officers] noticed the traces of beatings on my body and warned [the military police officers] not to bring me again to the cell in such condition. [The deputy head A.Mar.] started to beat me and curse at me, asking why I had not told [the isolation cell officers] that I had bumped into a door. I could hear the cries and sobbing of other soldiers coming from the rooms. As one police officer was beating me, the other filmed the beatings on his mobile phone and showed the film, in my presence, to his other colleagues and then they would start to humiliate me. They drove me to such a state that I told them I wanted to die. They immediately put a

blank sheet of paper in front of me, gave me a pen and said that if I wrote down that I wished to commit suicide they would assist me in doing so. They were proposing that I give false testimony against [R.H.] in the same words as [R.H.] had testified against me ... After my confrontation with [R.H.] ... he started begging me to forgive him and said that he had been unable to withstand the beatings, pain and fear and that he had given false testimony against me as otherwise bad things would have happened to his family. I was kept in [the military police headquarters] and isolation cell not for 10 days but for 18 days. On 20 May we were taken to the [Arabkir and Kanaker-Zeytun District] court, which ordered our detention. During the court hearing I stated that I had had no involvement in the death of [A.H.] and that I did not plead guilty. On 15 June the investigator, together with my defence lawyer, visited me at the [Nubarashen detention facility] and produced a forensic expert opinion according to which the grains of sand discovered on the soles of my military shoes corresponded to those taken from the site of the crime. I told them that I did not agree with the results of the expert opinion and the investigator threatened to tell the defence lawyer to go out [of the cell] for ten minutes and to [beat me] ... .

I am asking and requesting again that the investigative authorities conduct an impartial and thorough investigation by observing the ... requirements of the criminal process, to find the real murderers and to release me and other innocent persons involved in the investigation from this inhuman nightmare."

16. On 21 September investigator A.K., to whom the applicant's complaint had been forwarded, questioned M.Gh., A.Mar. and A.M., all of whom denied having ill-treated the applicant.

17. On 23 September 2006 the investigator decided not to institute criminal proceedings. His decision stated as follows:

"[Investigator A.K.] of the Military Prosecutor's Office... having examined the materials of criminal case ... assigned to me ...

During the investigation of the criminal case [concerning the death of A.H.] the accused [applicant] lodged a complaint with ... the General Prosecutor of Armenia, which [was] received by the Military Prosecutor's Office. In [that complaint] the accused stated that he and ... another accused, [R.H.], had been beaten during their stay in the Military Police Department by the head of the operational intelligence department [M.Gh.] and his deputy [A.Mar.], and that violence was used against him also in the room of [a senior officer, A.M].

The head of the operational intelligence department [M.Gh.] gave statements according to which no violence had been used against [the applicant] and said that, if such a thing had happened, the military police officer who had applied such violence would have been made to answer for his actions.

Similar statements were made by the deputy head of the operational intelligence department [A.Mar.] and a senior officer [A.M.].

According to the [letter of the head of the disciplinary isolation facility of the Military Police Department, M.T.], there were no traces of bodily injuries on [the applicant] and [R.H.] during their admission and stay in the isolation cell and the latter had not lodged any complaints about their health.

Therefore, the fact is that during the period in which ... [the applicant] and [R.H.] stayed in the Military Police Department, no violence against them by the officers of the above Department has been substantiated during the investigation of the criminal case [concerning the death of A.H. Hence], there is no evidence of a crime.

> Based on the above ... I decide not to institute criminal proceedings ... due to the absence of evidence of a crime."

18. According to the applicant, that decision was not served on him and he learned about it only after the closure of the investigation, when consulting the criminal case file.

19. On an unspecified date the investigation was closed.

20. On 1 November 2006 investigator A.K. provided the materials of the case file to the applicant and his lawyer.

21. On 14 November 2006 the criminal case was referred to the Syunik Regional Court for trial. It appears that during the trial the applicant and R.H. alleged that they had been ill-treated during the investigation.

22. It further appears that on 16 May 2007 the Syunik Regional Court, following the applicant's and R.H.'s allegations of ill-treatment, ordered a forensic medical examination. It apparently decided to stay the proceedings and asked the Military Prosecutor's Office to address the allegations of ill-treatment.

23. According to the report of the applicant's medical examination drawn up on 15 June 2007, no traces of injury were discovered on his body. The medical examination report then stated that because the examination had been conducted belatedly (a year after the alleged ill-treatment) and there were no medical documents, it was impossible to say whether the applicant had suffered any bodily injuries, since such injuries might have existed but then healed, leaving no trace.

24. The medical examination of R.H. revealed an old nasal fracture, but according to the medical examination report, it was impossible to establish the date on which it had been sustained. No other bodily injuries were found. It appears that the investigator then questioned several persons, including R.H.'s former co-servicemen, who stated that during their military service they had noticed that R.H.'s nose was deformed and that he had told them that he had injured his nose before his conscription.

25. On 20 June 2007 the military prosecutor's office of the Goris garrison refused to institute criminal proceedings concerning R.H.'s allegation of ill-treatment, for lack of evidence of a crime.

26. On 2 August 2007 the military prosecutor's office sent a letter to the Syunik Regional Court informing it that the applicant's and R.H.'s allegations of beatings had not been confirmed. The letter referred to the decisions of 23 September 2006 and 20 June 2007, as well as to the results of the two forensic medical examinations.

27. On 29 August 2007 the Syunik Regional Court found the applicant guilty of non-aggravated murder in connection with A.H.'s death, under Article 104 § 1 of the Criminal Code, and of breaching military discipline rules, under Article 359 § 2 (2) of the Criminal Code, in connection with A.H.'s beating. It imposed an aggregate sentence of nine and a half years' imprisonment. R.H. was also found guilty and sentenced to a prison term.

The Regional Court found that R.H.'s testimony could be considered as admissible evidence because his allegations of forced confessions had not been substantiated.

28. On 7 September 2007 the applicant lodged an appeal against the judgment of the Syunik Regional Court, stating that he did not agree with the judgment. He asked the court to quash the judgment and to acquit him since he was innocent.

29. It appears that all the other parties to the criminal proceedings also lodged appeals against the judgment of the Syunik Regional Court.

30. On 3 December 2007 the Criminal Court of Appeal dismissed all the appeals and upheld the judgment of 29 August 2007.

31. On an unspecified date the Military Prosecutor's Office lodged an appeal on points of law against the judgment of the Court of Appeal, seeking to have the part relating to the evaluation of the offences quashed and a harsher penalty imposed.

32. On 25 July 2008 the Court of Cassation granted the appeal. It quashed the part of the Court of Appeal's judgment concerning the evaluation of the offences and remitted the case for a fresh examination.

33. On 12 November 2008 the Criminal Court of Appeal examined the case anew and changed the applicant's offence in connection with A.H.'s death to aggravated murder under Article 104 § 2 (10) of the Criminal Code, increasing his sentence to fifteen years' imprisonment.

34. On an unspecified date the applicant's defence lawyer lodged an appeal on points of law against the judgment of the Court of Appeal of 12 November 2008. He claimed, *inter alia*, that the applicant had been beaten and tortured by military police officers and that when he and R.H. had been taken into custody and questioned as witnesses, R.H. had been forced to make confession statements.

35. On 25 February 2009 the Court of Cassation declared the appeal on points of law inadmissible. It held that it was precluded from examining the arguments contained in the applicant's appeal since he had not mentioned them in his appeal of 7 September 2007 and the Criminal Court of Appeal had therefore not examined them. The Court of Cassation, however, referred to the complaint concerning the applicant's alleged ill-treatment by mentioning investigator A.K.'s decision of 23 September 2006 not to institute criminal proceedings against the military police officers. It further noted that no criminal proceedings had been instituted on account of R.H.'s allegations of ill-treatment.

36. On 26 March 2009 the applicant lodged his own appeal on points of law against the judgment of 12 November 2008, in which he raised arguments similar to those indicated in his defence lawyer's appeal.

37. On 30 April 2009 the Court of Cassation declared the applicant's appeal inadmissible for lack of merit.

38. On an unspecified date thereafter the applicant lodged an application with the Constitutional Court, claiming that the Court of Cassation's refusal in its decision of 25 February 2009 to examine all the arguments indicated in his appeal on points of law was incompatible with the provisions of the Constitution.

39. On 22 December 2009 the Constitutional Court held that if the Court of Appeal quashed a judgment of the first-instance court and adopted a new legal act, an appeal on points of law should be available to the parties to the proceedings in question.

40. Following the ruling of the Constitutional Court, on 20 January 2010 the applicant lodged a new appeal on points of law against the judgment of 12 November 2008, claiming, *inter alia*, that neither the investigative authorities nor the courts had taken into account the fact that he and R.H. had been beaten and tortured by the military police.

41. On 26 March 2010 the Court of Cassation dismissed the applicant's appeal. The relevant parts of its decision read as follows:

> "In the present case the Court of Cassation will firstly address the following questions put before it: whether the arguments ... that [the applicant] was subjected to ill-treatment by police officers are substantiated, whether [R.H.'s] confession had been extorted as a result of beating and whether the charges had been based on evidence obtained by beating and torture.
>
> ... as it appears from the decision of 23 September 2006 ..., no criminal proceedings were instituted ... on account of the ill-treatment of [the applicant] and [R.H.] by ... military police officers for lack of evidence of a crime.
>
> ... Consequently, the arguments of the appellant with regard to [the applicant's] ill-treatment by police officers are unsubstantiated ..."

II. RELEVANT DOMESTIC LAW

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

42. Article 11 § 7 proscribes torture and physical or mental violence in the course of criminal proceedings. The prohibition includes the infliction of such treatment through the administration of medication, hunger, exhaustion, hypnosis, denial of medical assistance and other cruel treatment. It is also prohibited to coerce testimony from a suspect, accused, defendant, victim, witness and other parties to the proceedings by means of violence, threat, trickery, violation of their rights, or other unlawful actions.

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

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

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

46. Article 175 provides that the prosecutor and the investigator or the body of inquiry are obliged, within the scope of their jurisdiction, to institute criminal proceedings if there are reasons and grounds for doing so, as provided for by the Code.

47. Article 176 provides that reasons for instituting criminal proceedings include: (1) information about a crime has been addressed to the body of inquiry, investigator or prosecutor by an individual or a legal entity; (2) information about a crime has appeared in the mass media; and (3) data relating to a crime or material traces and consequences of a crime have been discovered by the body of inquiry, investigator, prosecutor, court or judge while performing their functions.

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

49. Article 181 provides that one of the following decisions must be taken whenever information about a crime is received: (1) to institute criminal proceedings; (2) to refuse to institute criminal proceedings; or (3) to hand over the information to the authority competent to deal with it.

50. Article 184 § 1 provides that if it comes to light that a crime unrelated to the crimes imputed to the accused has been committed by a third person without the involvement of the accused, the body of inquiry, the investigator or the prosecutor, based on the materials of the criminal case with which they are dealing, must adopt a decision to institute a new and separate set of criminal proceedings. The court must request the prosecutor to adopt such a decision.

51. Article 185 §§ 1, 2, 3 and 5 provides that, in the absence of lawful reasons and grounds for instituting criminal proceedings, the prosecutor, the investigator or the body of inquiry must adopt a decision refusing to institute criminal proceedings. A copy of the decision must be served on the individual who has reported the crime. This decision may be contested in accordance with the procedure prescribed by this Code. The court must either quash the decision or uphold it. If the decision is quashed, the prosecutor is obliged to institute criminal proceedings.

52. Article 290 § 1 provides that if their complaint has not been granted by a prosecutor, 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 operational and intelligence measures under the Code. Article 290 § 2 provides that the same persons are entitled to contest before a court any refusal by the body of preliminary inquiry, the investigator or the prosecutor to receive information about a crime or to institute criminal proceedings, in circumstances provided for by the Code. Under Article 290 § 3, a complaint may be lodged with the court within one month of the date of being informed about the refusal or, if no decision has been received, within one month of the expiry of the one-month period following the lodging of the complaint. Article 290 § 5 provides that, if the complaint is found to be substantiated, the court must order the authority carrying out the criminal proceedings to put an end to the violation of the complainant's rights or freedoms. If the contested actions are found to be lawful and no violation of rights or freedoms is found, the court will dismiss the complaint.

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

53. Article 104 § 10 provides that murder – the intentional unlawful deprivation of another's life – if motivated by "hooliganism" (*խուլիգանական դրդումներով*), is punishable by a term of up to fifteen years' imprisonment or life imprisonment.

54. Under Article 359 § 2 (2), a breach of military discipline rules, accompanied by violent acts and committed by a group of persons, is punishable by imprisonment for a term of up to five years.

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

56. The applicant complained that the authorities had failed to conduct an effective investigation into his allegations of ill-treatment by military police officers while in custody. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

57. The Government claimed that the applicant had failed to exhaust domestic remedies in respect of his complaint concerning the alleged lack of an effective investigation. In particular, he was entitled under Article 290 of the Code of Criminal Procedure ("the CCP") to contest the decision of 23 September 2006 before the courts. The Government submitted copies of courts' decisions in unrelated cases where such appeals had proven to be successful. They argued that even if the applicant had not been notified about the decision of 23 September 2006, as he claimed, he had still had a month in which to lodge a complaint with the courts under Article 290 § 3 of the CCP. Lastly, the entire case file, including the decision in question, had been made available to the applicant and his lawyer on 1 November 2006. Therefore, he had become aware of the decision at latest on that date, and had had the opportunity of contesting it before the competent court.

58. The applicant argued that he had not been informed about the decision of 23 September 2006 and therefore had had no opportunity of contesting it. Consequently, the only effective remedy available to him in respect of his complaint had been to raise the arguments concerning his ill-treatment before the trial court.

59. 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 (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70 and 71, 25 March 2014; and *Assenov and Others v. Bulgaria*, no. 24760/94, § 85, ECHR 1999-VIII).

60. Under Article 35 of the Convention, the existence of remedies which are available and sufficient must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Paksas v. Lithuania* [GC], no. 34932/04, § 75, ECHR 2011 (extracts)). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV). However, once this burden of proof 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 the requirement (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, §§ 74-77, ECHR 1999 V, and *Knaggs and Khachik v. the United Kingdom* (dec.), nos. 46559/06 and 22921/06, § 155, 30 August 2011).

61. The applicant alleged that he had been subjected to ill-treatment between 3 and 20 May 2006. In accordance with the criminal procedure in force at the material time, victims of ill-treatment could inform any of the competent authorities listed in Article 175 of the CCP about the alleged ill-treatment. The relevant authority was obliged to take a decision either to institute criminal proceedings or to refuse to institute such proceedings. A refusal to institute criminal proceedings could then be contested before the courts under Article 185 of the CCP in accordance with the prescribed procedure (see paragraphs 46, 49 and 51 above).

62. In the present case, on 21 June 2006 the applicant lodged a detailed complaint with, *inter alia*, the General Prosecutor, alleging that he had been ill-treated by military police officers. He provided relevant details, including the names of the alleged perpetrators, and requested that an investigation be carried out (see paragraph 15 above).

63. The Court notes that on 23 September 2006 the investigator at the Military Prosecutor's Office refused to institute criminal proceedings against the military police officers indicated in the applicant's complaint. There is no indication that the applicant was informed of that decision, and the Government did not claim that this had been the case. Thus, being unaware of that decision, the applicant was precluded from effectively contesting it before the courts.

64. On the other hand, it appears that the applicant and his lawyer became aware of the decision on 1 November 2006 when, following the closure of the investigation, the case file was made available to them (see paragraph 20 above). Even though he then learnt of the decision of

23 September 2006, the applicant did not contest it in separate proceedings but raised his complaint of ill-treatment before the court determining the criminal charge against him (see paragraph 21 above). Therefore, a question arises as to whether the applicant, having found out about the decision on 1 November 2006, could be expected to initiate separate proceedings to contest it, rather than raising the issue during the upcoming trial, in order for him to be considered to have complied with the requirements of Article 35 § 1 of the Convention. The Court considers that a complaint of ill-treatment raised before a trial court could not, as a general rule, be regarded as part of the normal process of exhaustion in respect of complaints of ill-treatment brought before the Court. Nevertheless, there may be exceptional circumstances in which such a procedure may be found to have provided an effective remedy in the particular circumstances of a case (see *Akulinin and Babich v. Russia*, no. 5742/02, §§ 25-34, 2 October 2008; *Vladimir Fedorov v. Russia*, no. 19223/04, §§ 41-50, 30 July 2009; and *Zalyan and Others v. Armenia*, nos. 36894/04 and 3521/07, §§ 235-37, 17 March 2016). In this connection, the Court reiterates that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, given the context of protecting human rights. This rule is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case (see, among other authorities, *Akulinin and Babich*, cited above, § 30; *Vladimir Fedorov*, cited above, § 45; and *Delijorgji v. Albania*, no. 6858/11, § 54, 28 April 2015).

65. The Court is mindful of the fact that disputing the decision of 23 September 2006 before the courts was in general a remedy which was capable of providing the applicant with adequate redress in respect of his complaint under Article 3. The Court has already examined in *Zalyan and Others* (cited above, §§ 235-37) the question of whether raising allegations of ill-treatment before the courts determining the criminal charge against the applicant could be considered as an effective remedy for a complaint under Article 3, and found that in certain circumstances it could be. In that case, no decision had been taken on the applicants' allegations of ill-treatment, whereas in the present case, as mentioned above, the applicant did not become aware of the prosecutor's decision of 23 September 2006 refusing to institute proceedings before 1 November 2006 that is until the close of the investigation. The Court observes, however, that although the decision in question was not made available to the applicant until 1 November 2006, the case was sent to the Syunik Regional Court for examination on the merits as early as 14 November 2006 (see paragraph 21 above). The Syunik Regional Court took cognisance of the merits of the applicant's complaint, stayed the proceedings pending further clarifications from the Military Prosecutor's Office and ordered a forensic medical examination of the applicant (see paragraphs 22 and 26 above). Furthermore, in addition to his

arguments raised before the trial court, the applicant submitted detailed arguments with regard to his alleged ill-treatment in his appeals on points of law (see paragraphs 34, 36 and 40 above). Following the Constitutional Court's decision of 22 December 2009, the Court of Cassation eventually examined and dismissed his allegations for lack of evidence, relying on, *inter alia*, the decision of 23 September 2006 (see paragraph 41 above). It is notable in this respect that the courts examining the applicant's criminal case had the authority under Articles 41 § 2 (4) and 184 § 1 of the CCP to request the prosecutor to institute criminal proceedings and carry out an investigation into the applicant's allegations of ill-treatment if there was sufficient evidence to do so and that this procedure has proven to be effective in the past (see *Zalyan and Others*, cited above, §§ 113, 124, 236 and 237, in which the Court of Cassation quashed the applicants' convictions on the ground that, *inter alia*, there was need to investigate their allegations of ill-treatment, after which an investigation was carried out by the prosecutor who eventually refused to institute criminal proceedings against the police officers).

66. The Court thus considers that, by raising his allegations of ill-treatment before the courts examining the merits of his criminal case, the applicant pursued a remedy which, in the particular circumstances of the case, was capable of being effective in respect of his complaint under Article 3 of the Convention (see, *a contrario*, *Sahakyan and Mkrtchyan v. Armenia* (dec.), nos. 57687/09, 63452/09 and 63455/09, § 95, 1 October 2013). In circumstances where the court of highest instance examined and dismissed the applicant's allegations of ill-treatment, basing its conclusions on the investigator's findings reflected in the decision of 23 September 2006, it is not apparent that disputing the same decision via a separate procedure would have been more successful, or would have been decided on the basis of any other issues. Moreover, in the case of *Zalyan and Others* the courts refused to examine the merits of the applicants' allegations of ill-treatment on the grounds that they had already been examined and dismissed by the trial court (see *Zalyan and Others*, cited above, §§ 236 and 237). It is therefore open to doubt whether, in circumstances where the investigation had been closed and the case was to be transferred to the trial court for examination on the merits, the court before which the applicant contested the decision in question would have examined his complaint.

67. The Government have argued that the applicant, being unaware of the decision of 23 September 2006, could have complained of inaction on the part of the prosecution authority within one month of the expiry of the one-month period following the lodging of his complaint, as provided for by Article 290 § 3 of the Code of Criminal Procedure. The Court observes that in *Zalyan and Others* (cited above, §§ 231-33), referring to the Constitutional Court's decision of 7 December 2009 (see paragraph 55 above), it found that at the material time there had been no clear, effective

and accessible remedies available to the applicants against the alleged inaction of the investigating authorities in respect of their complaints of ill-treatment. The Court does not see any reason to depart from that finding in the present case.

68. Accordingly, the Court finds that in the particular circumstances of the present case, and having in mind that non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the claim (see *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007; *Skałka v. Poland* (dec.), no. 43425/98, 3 October 2002, and *Edelmayer v. Austria* (dec.), no. 33979/96, 21 March 2000), the applicant cannot be said to have failed to exhaust the domestic remedies. It therefore concludes that there are no grounds to declare the applicant's complaint under Article 3 inadmissible for failure to comply with the requirements of Article 35 § 1 of the Convention.

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

B. Merits

1. The parties' submissions

70. The applicant submitted that the authorities had failed to carry out an effective investigation into his allegations of ill-treatment. He questioned the credibility of the statements submitted by the military police officers and pointed out that the investigating authority had failed to hold a confrontation between him and the military police officers in order to clarify the significant discrepancies between their version of the events and his own. The applicant also questioned the credibility of the letter from the head of the disciplinary isolation facility, claiming that in reality he had been transferred to military unit no. 20440 not on 12 May but on 24 May 2006.

71. The Government submitted that the authorities had carried out an effective investigation into the applicants' allegations of ill-treatment. In particular, further to the applicant's complaint lodged on 21 June 2006, the investigator at the Military Prosecutor's Office questioned witnesses, including the head of the operational intelligence department of the military police, M.Gh., his deputy, A.Mar., and a senior officer of the same department, A.M. All of them denied the use of any violence against the applicant at the military police headquarters. Based on their statements and a letter from the head of the disciplinary isolation facility of the military police headquarters, the investigator decided not to institute criminal

proceedings, since he had found no evidence of a crime having been committed.

2. The Court's assessment

(a) General principles

72. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

73. An obligation to investigate "is not an obligation of result, but of means": not every investigation necessarily has to be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and, if justified, punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006, and *Virabyan v. Armenia*, no. 40094/05, § 162, 2 October 2012).

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

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

75. In the present case, the authorities were informed about the ill-treatment allegedly inflicted on the applicant as a result of his complaint of 21 June 2006 lodged with, *inter alia*, the General Prosecutor's Office (see paragraph 15 above). That complaint was sufficiently detailed, containing precise dates, locations and the names of the alleged perpetrators. In the Court's opinion, it can therefore be considered as an "arguable claim". It is true that the applicant's complaint was lodged with a month's delay after the alleged ill-treatment. However, the Court does not consider the delay to be of such duration as to deprive the complaint *ipso facto* of any substance or prospects of success. Furthermore, the absence of medical certificates does not affect this finding. The authorities thus had an obligation to carry out an effective investigation into the applicant's allegations.

76. The Court notes that the applicant's allegations of ill-treatment were examined by the Military Prosecutor's Office, the findings of which were subsequently endorsed by the domestic courts (see paragraphs 27 and 41 above). Therefore, the issue in the present case is not so much whether there was some form of inquiry in general, but whether it was conducted diligently, whether the authorities were determined to investigate fully the applicant's allegations and, accordingly, whether the inquiry could be considered to have been "effective" within the meaning of Article 3 of the Convention.

77. Turning to the question of the effectiveness of the authorities' response to the applicant's allegations of ill-treatment, the Court notes that his complaint of 21 June 2006 lodged with, *inter alia*, the General Prosecutor's Office, was forwarded to the Military Prosecutor's Office, which was in fact investigating the criminal case against him. Moreover, his complaint was referred to A.K., the investigator in charge of the investigation of the same criminal case, who eventually decided not to prosecute the military police officers in question. The Court observes that from the point of view of organisational hierarchy, the military police is a distinct body subordinate to the Ministry of Defence and not to the Military Prosecutor's Office, which forms part of the prosecution authority. However, considering that investigator A.K. was called upon to investigate the actions of military police officers who had been involved in the preliminary investigation of the criminal case to which he had been assigned, and that the outcome of the inquiry into the applicant's allegations of ill-treatment would have necessarily had implications for the admissibility of evidence in that case, the Court cannot consider such an investigation to satisfy the requirement of independence. It is noteworthy that investigator A.K.'s decision refusing to institute criminal proceedings contained generalised conclusions lacking any reasoning. More importantly, no explanation was provided as to why the statements of the military police officers were considered more credible than the applicant's account of the

events (see paragraph 17 above). It therefore appears that the investigating authority, without any justification, gave preference to the evidence provided by the police officers (compare, *Nalbandyan v. Armenia*, nos. 9935/06 and 23339/06, § 123, 31 March 2015).

78. The Court further notes that the authorities were informed about the applicant's allegations of ill-treatment on 21 June 2006. It appears from the decision refusing to institute criminal proceedings that the only investigative measure undertaken by A.K. was to question the military police officers who had allegedly ill-treated the applicant three months after receiving his complaint. In particular, according to the relevant records, M.Gh., A.Mar. and A.M. were questioned on 21 September 2006 (see paragraph 16 above). No other measures were undertaken during the three months preceding the interviews or thereafter whereas A.K. made his decision refusing to institute criminal proceedings against the officers in question already on 23 September 2006, merely relying on their statements and the letter from the head of the disciplinary isolation facility (see paragraph 17 above). Against this background, the Court finds that the authorities failed to react to the applicant's complaint promptly and diligently.

79. The Court also notes that the prosecution authority had the legal power to interview the applicant, the police officers and any witnesses, to order a medical examination and to collect other evidence. Instead, the investigator at the Military Prosecutor's Office merely interviewed the alleged perpetrators and based his conclusions on their statements denying the applicant's ill-treatment. The Court observes that the investigator did not question the applicant, let alone hold a confrontation with the officers in question in an attempt to clarify their conflicting accounts of the events.

80. In addition, the investigating authority failed to order a medical examination immediately upon receipt of the applicant's complaint, which resulted in the possible loss of vital evidence. Instead, the investigator relied on a letter from the head of the isolation facility of the military police headquarters, which stated that the applicant had shown no signs of bodily injuries. The Court observes, however, that the letter was not supported by any medical document, nor did it suggest that the applicant had undergone a medical examination. The Court further observes that the applicant was not subjected to a medical examination until one year after the alleged ill-treatment, following the decision of the Syunik Regional Court. Owing to its belated conduct and the absence of any medical documents, the medical examination did not produce any useful conclusions (see paragraph 23 above).

81. In view of the foregoing, the Court concludes that the authorities have failed to carry out an effective investigation into the applicant's allegations of ill-treatment.

82. There has accordingly been a violation of Article 3 of the Convention in its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed 4,000 euros (EUR) in respect of pecuniary damage, including the cost of medication provided to him by his relatives while in prison. The applicant further claimed EUR 26,000 in respect of non-pecuniary damage.

85. The Government argued that the pecuniary damage claimed was not connected with the alleged violation of the applicant's rights under the Convention and was not supported by any evidence, while the claim in respect of non-pecuniary damage was hypothetical.

86. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, ruling on an equitable basis, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

87. The applicant also claimed EUR 6,000 for costs and expenses. That amount included EUR 2,000 for legal and other expenses incurred before the domestic courts and EUR 4,000, the amount he had agreed to pay his representative before the Court if the Court found in his favour.

88. The Government submitted that the applicant had failed to produce any evidence of the costs and expenses claimed.

89. 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. The Court notes that the applicant has not produced any documentary evidence to substantiate his claim for costs and expenses in the domestic proceedings. It further notes that he has failed to submit any documentary evidence that he is under an obligation to pay the amount claimed to his representative before the Court. In such circumstances, these costs cannot be claimed, since they have not been actually incurred and this claim must be rejected (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, § 221, Series A no. 324).

C. Default interest

90. 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. *Declares* the complaint concerning the lack of an effective investigation admissible;

2. *Holds* that there has been a violation of the procedural limb of Article 3 of the Convention in its procedural limb;

3. *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 6,000 (six thousand euros) 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, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 14 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Linos-Alexandre Sicilianos
Deputy Registrar	President