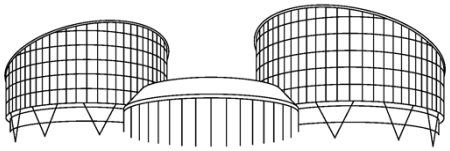

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BADALYAN v. ARMENIA

(Application no. 28215/11)

JUDGMENT

Art 3 (procedural) • Ineffective investigation into applicant's allegations of ill-treatment whilst detained as a suspect in a high-profile criminal case • Failure to ensure applicant's effective participation • Unjustified suspension of investigation in its entirety resulting in four years and three months of inactivity • Criminal proceedings against alleged perpetrators discontinued due to expiration of statutory limitation period resulting from authorities' inactivity

STRASBOURG

13 June 2023

FINAL

13/09/2023

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

In the case of Badalyan v. Armenia,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Yonko Grozev,
Armen Harutyunyan,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 28215/11) 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 and American national, Mr Nairi Badalyan ("the applicant"), on 3 May 2011;

the decision to give notice to the Armenian Government ("the Government") of the complaint concerning the alleged lack of an effective investigation and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 13 September 2022 and 23 May 2023,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the alleged failure of the authorities to conduct an effective investigation into the applicant's allegations of ill-treatment and raises issues under Article 3 of the Convention.

THE FACTS

2. The applicant was born in 1968 and lives in North Hollywood (United States of America). The applicant was represented by Mr A. Ghazaryan, a lawyer practising in Yerevan.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case may be summarised as follows.

5. The applicant alleged that between November 1999 and June 2000, when he was detained as a suspect in a high-profile criminal case (no. 62207199) involving a terrorist act in the Armenian Parliament, he had been subjected to repeated acts of torture by the investigators and officers of the detention facility for the purpose of extorting a confession. The alleged

ill-treatment included, *inter alia*, multiple blows to his head, which resulted in five broken teeth, a deformation of the nasal septum and partial loss of hearing. He had also allegedly not been allowed to sleep or sit for extended periods of time.

6. On 27 June 2000 the criminal case against the applicant was dropped for lack of evidence.

7. On 30 June 2000 the applicant complained to the authorities of the ill-treatment that he had allegedly endured. He was questioned in this connection on 17 July 2000.

8. On 18 July 2000 the applicant was subjected to a forensic medical examination, which revealed a number of injuries on his head and body, including five broken teeth, a broken nasal septum and hearing loss. The forensic medical expert was not, however, able to determine when those injuries had been sustained because of the delay in arranging the examination.

9. Between July and September 2000, statements were taken from the applicant's former cellmates, the head of the detention facility and the forensic medical expert, but no further investigations were carried out. It appears that the applicant's cellmates denied that he had been ill-treated.

10. On 4 March 2002, following repeated complaints by the applicant and interventions by Amnesty International and the Armenian Parliament, the Prosecutor General instituted criminal proceedings (no. 62201102) under Article 183 § 2 of the Criminal Code (exceeding of authority accompanied by violence) on account of the alleged ill-treatment of the applicant. It appears that the applicant was formally involved in the case as a witness. He was questioned on several occasions and reiterated his allegations of ill-treatment.

11. On 20 March 2002 the investigator ordered that the applicant undergo an additional forensic medical examination, the conclusions of which were produced on 3 May 2002 and confirmed the findings of the previous medical examination.

12. According to the material in the case file, between March 2002 and April 2003 at least thirteen witnesses were interviewed, including several officers of the detention facility, members of the investigative team in criminal case no. 62207199, the applicant's four defence lawyers who had represented him in that case, and his former cellmates.

13. The applicant alleged, without providing any supporting documents, that between May 2002 and October 2003 he had listened to secret surveillance recordings which had been made in the cell where he had been detained, and which had been obtained by a court order and admitted in evidence. While listening to the recordings, he had allegedly identified the voices of the perpetrators of his ill-treatment. He further alleged that the crimes against him had been proven to have taken place as early as the summer of 2003, but that the President of Armenia and the Prosecutor General had intervened for political reasons and demanded that the

investigating authority stop the investigation, while the investigator dealing with his case had been transferred to another one.

14. On 19 October 2003 the applicant left for the United States of America, where – by decisions issued in 2006 and 2007 – he was granted political asylum owing to fears for his safety should he return to Armenia.

15. On 10 November 2004 the investigator dealing with the criminal case gave a press conference, during which he stated that the fact of the applicant's ill-treatment had been proven and that it was necessary to hold the perpetrators to account.

16. On 21 January 2005 the investigator suspended the criminal proceedings pursuant to Article 31 § 1(5) of the Code of Criminal Procedure ("the CCP") on the ground that their further conduct was temporarily prevented by *force majeure*. In particular, it was stated that there was a need to carry out further investigative measures with the applicant's participation, including interviews and confrontations, in view of the discrepancies between his statements and those of the members of the investigative team in criminal case no. 62207199. However, that was impossible since the applicant had moved to the United States and had stated in his interviews to the press that he had as yet no intention of returning to Armenia, owing to security concerns. In such circumstances, it was impossible to make a final assessment of the actions of the alleged perpetrators. The case was therefore to be suspended until the reasons for its suspension ceased to exist. The applicant was not informed about this decision.

17. It appears that on an unspecified date the applicant hired a lawyer to represent his interests.

18. On 13 April 2006 the lawyer made an enquiry about the progress of the case and was informed, by a letter of 26 April 2006, that the criminal proceedings had been suspended.

19. On 28 August 2006 the applicant hired another lawyer, Z.P.

20. On 31 October 2006 Z.P. contested the decision to suspend the proceedings before the Prosecutor General. She argued that the term "*force majeure*", within the meaning of Article 31 § 1(5) of the CCP, implied an earthquake, flood, war or other disaster on that scale, and requested that the proceedings be resumed. It appears that that request was dismissed.

21. On an unspecified date Z.P. lodged an appeal with the courts on similar grounds.

22. On 23 November 2006 Z.P. was granted access to some of the material in the case file in the General Prosecutor's Office, including the decision to suspend the proceedings. It was explained to her that the investigation would be resumed as soon as the applicant appeared before the investigating authority.

23. On 24 November 2006 the Kentron and Nork-Marash District Court of Yerevan ("the District Court") dismissed Z.P.'s appeal (see paragraph 21 above) on the grounds that the applicant was involved in the case only as a

witness and had never been recognised as a victim or a civil plaintiff, and therefore was not entitled to contest the investigator's decision to suspend the investigation.

24. On 28 January 2007 Z.P. applied to the Prosecutor General complaining that the investigating authority had failed to conduct a proper examination of the applicant's allegations of ill-treatment. She further complained about the failure to recognise the applicant as a victim and the decision to suspend the proceedings (see paragraph 16 above). The lawyer requested that the applicant be recognised as a victim for the purpose of criminal proceedings no. 62201102 (see paragraph 10 above), arguing that the investigating authority should have done so immediately after the institution of the proceedings and that this had not been done in order to deprive the applicant of the rights enjoyed by a victim in criminal proceedings. She further requested that the decision of 21 January 2005 be reversed for lack of *force majeure*. It appears that that request was dismissed.

25. On 16 February 2007 Z.P. lodged a similar application with the courts.

26. On 6 April 2007 the District Court dismissed the complaints, including the request that the applicant be recognised as a victim. The court held that all the necessary investigative and procedural measures had been taken in the course of the investigation, but that it was impossible to determine the final outcome of the case in view of the applicant's departure from the country. The applicant had not been recognised as a victim and his lawyer Z.P. had not been recognised as the legal representative of a victim because of the absence of legal grounds for such recognition at that stage of the investigation. Nevertheless, Z.P. had been invited to the General Prosecutor's Office, where the reasons for suspending the investigation and the material preventing the recognition of the applicant's victim status had been presented to her. It had also been explained to her that the proceedings would immediately resume as soon as the applicant appeared before the investigating authority. The court concluded that all the actions of the investigating authority had been lawful.

27. On 30 May 2007 the Criminal Court of Appeal dismissed an appeal lodged by the lawyer Z.P. against that decision, finding that the applicant's presence was required in order to clarify the circumstances of the case and to carry out confrontations and other necessary investigative measures which could then serve as a basis for the recognition of his victim status, and that it was impossible to do so in the applicant's absence. That decision entered into force from the moment of its delivery.

28. It appears that on 28 August 2007 another lawyer hired by the applicant, K.M., lodged an application with the General Prosecutor's Office, requesting access to the case file and complaining about the decision of the Criminal Court of Appeal of 30 May 2007.

29. On 7 September 2007 the General Prosecutor's Office refused to grant access to the case file on the grounds that the case had been suspended and

that the applicant had not been recognised as a victim. It further stated that the investigation would be resumed as soon as the applicant appeared before the investigating authority.

30. On 15 October 2007 K.M. lodged a complaint with the District Court, arguing that the refusal to recognise the applicant as a victim and to grant him access to the case file was unlawful. He stated that he disagreed with the Criminal Court of Appeal's decision of 30 May 2007 (see paragraph 27 above) and intended to contest it before the European Court of Human Rights, alleging a violation of Article 3 of the Convention. The lawyer further contested the grounds for suspending the investigation, arguing that they could not be considered *force majeure*. Furthermore, prior to its suspension the investigation had already been ongoing for about three years and all the necessary confrontations had been conducted during that period. The General Prosecutor's Office had failed to explain what other confrontations it was necessary to hold.

31. The outcome of that complaint is unknown.

32. On 10 December 2008 the applicant wrote to the President of Armenia, with a copy to the Prosecutor General, requesting that security measures be taken to ensure his safe return to Armenia.

33. On 27 February 2009 the Prosecutor General replied to the applicant, pointing to the fact that the criminal proceedings against him had been discontinued and that he was considered an acquitted person. He was asked to provide specific facts in support of the risk of harm he claimed to face should he return to Armenia, so that the authorities could take appropriate measures.

34. On 7 April 2009 the applicant applied to the Prosecutor General arguing, *inter alia*, that the suspension of the criminal proceedings concerning his allegations of ill-treatment under the pretext of his absence was just an excuse for discontinuing the criminal case and allowing the perpetrators to avoid responsibility. He had left Armenia nineteen months after the case had been instituted. By then the investigating authority had failed to take all the necessary measures to investigate his allegations and therefore his departure had not changed anything and had been simply a pretext for the suspension of the criminal proceedings. The applicant lastly informed the Prosecutor General that he had returned to Armenia and requested that the criminal proceedings be resumed.

35. On 4 May 2009 the criminal proceedings were resumed on the ground that the applicant had returned to Armenia.

36. On the same date the applicant was formally recognised as a victim in the criminal case. The decision recapitulated his allegations of ill-treatment and the fact that the existence of injuries had been confirmed by the forensic medical examinations. Furthermore, the applicant had indicated the identities of the officials who had allegedly ill-treated him and had requested that he be recognised as a victim in his applications to the authorities. Taking into

account the fact that the applicant's ill-treatment by the above-mentioned officials had been established by the investigation, it was necessary to recognise him as a victim.

37. On 27 May 2009 an additional forensic medical examination by a panel of experts was ordered. The experts were asked to confirm the accuracy of the conclusions of the previous forensic medical examinations and to determine whether the applicant had suffered from any illnesses or had any bodily injuries. On an unspecified date the experts produced their conclusions, according to which it was impossible to answer convincingly the questions posed by the investigator because of the delays in conducting the previous forensic medical examinations and the resulting uncertainty about their conclusions.

38. In August 2009 an officer of the detention facility, who had been questioned in April 2003, was questioned again as a witness. A confrontation was held between that officer and another officer of the same facility who had also been previously questioned in April 2003.

39. On 27 August 2009 charges were brought in connection with the applicant's alleged ill-treatment against an investigator of the Military Prosecutor's Office and two officers of the facility where the applicant had been detained, who were accused of coercion of testimony.

40. On 2 November 2009 the investigator ordered a forensic handwriting examination in order to determine whether the applicant's ill-treatment might have been ordered and overseen by the then Military Prosecutor. The handwriting experts produced their opinion on 24 November 2009, failing to reach any conclusive findings.

41. On 31 May 2010 the investigator decided to drop the charges and to discontinue the criminal proceedings. He found that, while the applicant had likely been subjected to ill-treatment, it was impossible to establish conclusively by whom, when and for what motives. The evidence obtained was not sufficient to continue the prosecution or to bring charges against other officials, while all possibilities of obtaining new evidence had been exhausted. The time which had passed since the events and the peculiarities of the facts of the case made it impossible to determine the specific circumstances of the applicant's ill-treatment. The investigating authority had had difficulty in accurately characterising the alleged acts under the provisions of the criminal law. However, in any event, the criminal proceedings were to be discontinued because of the expiry of the relevant limitation period. In reaching those findings the investigator relied on the conclusions of the forensic medical examinations conducted in 2000, 2002 and 2009 (see paragraphs 8, 11 and 37 above), the witness statements given in 2002 and 2003, as well as the statement given by one of the witnesses during the confrontation conducted in August 2009 (see paragraphs 12 and 38 above) and the results of the forensic handwriting examination (see paragraph 40 above).

42. On 25 June 2010 the applicant contested the investigator's decision before the courts.

43. On 28 July and 30 August 2010 respectively, the District Court and the Criminal Court of Appeal dismissed the applicant's appeals and upheld the investigator's decision.

44. On 30 September 2010 the applicant lodged an appeal on points of law, which was declared inadmissible for lack of merit by the Court of Cassation in a decision of 4 November 2010.

RELEVANT LEGAL FRAMEWORK

45. Article 31 § 1(5) of the Code of Criminal Procedure ("the CCP") provides that criminal proceedings may be wholly or partially suspended by a decision of the prosecutor, the investigator or the court in case of *force majeure* which temporarily prevents the further conduct of the proceedings.

46. Article 58 of the CCP provides that a person who has suffered non-pecuniary, physical or pecuniary damage as a direct result of a criminal offence is recognised as a victim. Under Article 100 of the CCP, any person not involved as a participant in the proceedings has the right to demand to be recognised as a victim if there are grounds to do so.

47. Articles 402 and 403 of the CCP, as in force at the material time, provided that judgments and decisions of the Court of Appeal entered into legal force from the moment of their delivery and that the Court of Cassation had the authority to review judgments and decisions of the first-instance and appeal courts which had entered into legal force. Under Article 404 of the CCP, the right to bring an appeal on points of law was reserved for the Prosecutor General and his or her deputies, as well as the parties to the proceedings such as the accused, the victim and the civil plaintiff or defendant. In accordance with Article 412 of the CCP, such appeals could be lodged within six months from the date of entry into force of the judgment of a lower court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained that the conduct of criminal proceedings no. 62201102 relating to his allegations of ill-treatment had entailed numerous violations of his rights, including his right to a trial within a reasonable time. He relied on Article 6 of the Convention.

49. The Court reiterates that, by virtue of the *jura novit curia* principle, it is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it

under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018).

50. In the present case, when notice of the application was given to the Government, the parties were asked to submit observations under the procedural aspect of Article 3 of the Convention. The Government objected to the recharacterisation of the applicant's complaint, arguing that it should be examined under Article 6 of the Convention, as submitted by the applicant (see paragraph 48 above), and declared inadmissible because that Article was not applicable to the proceedings in question.

51. The Court, however, disagrees with the Government. It notes that the essence of the applicant's complaint is that there was no effective investigation into his allegations of ill-treatment and that those responsible were not prosecuted. The Court therefore considers it appropriate to examine the applicant's complaint under the procedural aspect of Article 3 (see, *mutatis mutandis*, *Toledo Polo v. Spain* (dec.), no. 39691/18, § 170, 22 March 2022), which reads as follows:

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

A. Admissibility

1. The parties' submissions

(a) The Government

52. The Government submitted that the applicant had failed to comply with the six-month time-limit, which was to be calculated from the date of the investigator's decision of 21 January 2005 or the decision of the Criminal Court of Appeal of 30 May 2007 (see paragraphs 16 and 27 above). While the investigation had been formally completed by the investigator's decision of 31 May 2010 (see paragraph 41 above), which had been confirmed upon appeal by the Court of Cassation on 4 November 2010 (see paragraph 44 above), the applicant – to whom the ineffectiveness of the investigation had been obvious during that entire process – ought to have realised the lack of any prospect of an effective investigation and lodged his application with the Court long before that date. In fact, numerous factors suggested that he had already been aware of the ineffectiveness of the investigation before the decision of 21 January 2005 to suspend it (see paragraph 16 above), as he himself had claimed that no investigative measures had been conducted since 2002. Considering the manner in which the investigation had been conducted since 2002 and the fact that all the applicant's appeals had been rejected by the Prosecutor General and the courts, the applicant could not have legitimately believed that there had been a realistic possibility of the investigation moving forward. Furthermore, there had been a lack of any

meaningful contact between the applicant and the authorities between September 2007 and December 2008. Thus, the applicant should have considered the investigator's decision of 21 January 2005 suspending the investigation (see paragraph 16 above) to be the final decision. It was notable that the applicant had first stated his intention to apply to the Court in his complaint of 15 October 2007 (see paragraph 30 above). However, he had only lodged his application on 3 May 2011, more than twelve years after the alleged ill-treatment.

53. The Government further argued that the applicant had failed to exhaust domestic remedies because he had not lodged an appeal on points of law against the decision of the Criminal Court of Appeal of 30 May 2007 upholding the investigator's decision to suspend the proceedings (see paragraph 27 above).

(b) The applicant

54. The applicant submitted that the Government had acknowledged that the final decision resolving the case was the decision of 31 May 2010 (see paragraph 41 above), upheld upon appeal by the Court of Cassation on 4 November 2010 (see paragraph 44 above). He had lodged his application with the Court within six months from the date of the latter decision and thereby complied with the six-month rule. The applicant further stressed that his case concerned a continuous situation. He had always been active in his efforts to have his allegations investigated, having reported his ill-treatment immediately after his release in June 2000 (see paragraph 7 above), and thanks to his tireless efforts a criminal case had eventually been instituted in March 2002 (see paragraph 10 above). Between May 2002 and October 2003 he had listened to the secret surveillance recordings made in his cell (see paragraph 13 above). In October 2003 he had had to leave for the United States of America, where he had been granted political asylum because of the circumstances of the case at hand, including the hostile environment created around him by the authorities. From that moment onwards the investigating authority had tried to justify its every action by reference to his absence from Armenia. At the same time, the authorities had repeatedly suggested that the investigation would be resumed as soon as the applicant returned to Armenia (see paragraphs 22 and 29 above). In December 2008, acting out of diligence, he had written to the President of Armenia requesting that security measures be taken to enable his return to the country, which had eventually happened in April 2009. Following his return, the criminal proceedings had been resumed, he had been recognised as a victim and several persons had been charged. Those had been practical and effective remedial measures capable of leading the applicant to believe not only that the proceedings had been resumed, but that they would also be effective and capable of providing full redress. He had always kept track of the investigation and maintained contact with the authorities; it was not true that there had been no contact after

September 2007, taking into account his complaint of 15 October 2007 (see paragraph 30 above). In sum, the applicant had been justified in having awaited the final outcome of the investigation before applying to the Court. Even if one accepted in theory the argument that he had waited for an unreasonably long time between 2005 and 2009 for the resumption of the investigation, the fact that the investigation had been resumed in May 2009 made that argument immaterial.

55. As regards the Government's non-exhaustion claim, the applicant submitted that his case had concerned a continuous situation and that it had not ended at the stage of the decision of the Criminal Court of Appeal of 30 May 2007. Moreover, the situation had later been remedied because the proceedings had been resumed. Thus, the investigation had continued after that date and had been completed only by the investigator's decision of 31 May 2010. Since that had been the final decision, he had considered it important to contest that decision before the courts, thereby exhausting all the effective domestic remedies.

2. The Court's assessment

(a) Preliminary issue

56. Before addressing the parties' arguments on admissibility, the Court considers it necessary to address, as a preliminary issue, the question of its temporal jurisdiction over the case. It notes in this connection that the Convention entered into force in respect of Armenia on 26 April 2002, that is to say, about three years after the alleged ill-treatment occurred. However, a significant proportion of the procedural steps aimed at investigating the applicant's allegations took place after that date. It follows that the Court has temporal jurisdiction to examine the applicant's complaints, limited, however, to the procedural steps which were or ought to have been taken after the critical date (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 140-51, ECHR 2013).

(b) Compliance with the six-month rule and exhaustion of domestic remedies

57. The Court considers that these issues are closely linked to the substance of the applicant's complaint concerning the alleged lack of an effective investigation and must therefore be joined to the merits.

(c) Conclusion

58. 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

1. The parties' submissions

59. The applicant submitted that the authorities had failed to conduct an effective investigation into his allegations of torture. They had failed to recognise his victim status from the beginning of the criminal proceedings until 4 May 2009, which had significantly reduced his procedural rights and ability to participate fully in the investigation. No investigative measures had been conducted after his departure from Armenia in 2003, and in January 2005 the investigation had been unreasonably suspended for more than four years, thus breaching the promptness and reasonable expedition requirements applicable to any investigation. Only a handful of investigative measures – which were neither thorough nor adequate – had been conducted after the resumption of the investigation, and none with his participation. The proceedings had been eventually discontinued in a manner entailing gross breaches of domestic law and without proper substantiation. The reasons for discontinuing the investigation included the fact that a long time had elapsed since the alleged events and the expiry of the limitation period, which was contrary to the Court's case-law.

60. The Government did not comment on the applicant's allegations.

2. The Court's assessment

(a) General principles

61. The Court refers to the principles established in its case-law regarding the obligation to conduct an effective investigation of allegations of ill-treatment by State agents (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 114-23, ECHR 2015). It points, in particular, to the requirement for such an investigation to be conducted promptly and with reasonable expedition. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. Furthermore, the victim should be able to participate effectively in the investigation. Lastly, the investigation must be thorough, which 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 (ibid., §§ 121-23).

62. The Court further refers to the principles established in its case-law regarding the application of the six-month rule, including in cases concerning the State's obligation to conduct an effective investigation into ill-treatment (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 258-69, ECHR 2014 (extracts)). The Court has held, in particular, that in

cases concerning an investigation into ill-treatment, applicants are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation. It follows that the obligation of diligence incumbent on applicants contains two distinct but closely linked aspects: on the one hand, the applicants must contact the domestic authorities promptly concerning progress in the investigation – which implies the need to apply to them with diligence, since any delay risks compromising the effectiveness of the investigation – and, on the other hand, they must lodge their application promptly with the Court as soon as they become aware or should have become aware that the investigation is not effective. With regard to the first aspect of this duty of diligence, the Court has held that applicants' delay in lodging a complaint is not decisive where the authorities ought to have been aware that an individual could have been subjected to ill-treatment as the authorities' duty to investigate arises even in the absence of an express complaint. Nor does such a delay affect the admissibility of the application where the applicant was in a particularly vulnerable situation, having regard to the complexity of the case and the nature of the alleged human rights violations at stake, and where it was reasonable for the applicant to wait for developments that could have resolved crucial factual or legal issues. With regard to the second aspect of this duty of diligence, the Court has stated that the issue of identifying the exact point in time that this stage occurs necessarily depends on the circumstances of the case and that it is difficult to determine it with precision (ibid., §§ 263-66).

63. Thus, the Court has rejected as out of time applications where there had been an excessive or unexplained delay on the part of applicants once they had, or ought to have, become aware that no investigation had been instigated or that the investigation had lapsed into inaction or become ineffective and, in any of those eventualities, that there was no immediate, realistic prospect of an effective investigation being provided in the future. In other words, the Court has considered it indispensable that persons who wish to bring a complaint before it about the ineffectiveness or lack of such an investigation do not delay unduly in lodging their application. Where there has been a considerable lapse of time, and there have been significant delays and lulls in investigative activity, there will come a time when the applicants must realise that no effective investigation has been, or will be, provided. The Court has held, however, that so long as there is some meaningful contact between applicants and the authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay by the applicants will not generally arise (ibid., §§ 268-69).

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

64. In the present case, the applicant promptly alleged before the domestic authorities that he had been ill-treated in 1999-2000 while detained in connection with a high-profile criminal case. It appears that there was some initial inquiry conducted in 2000 without much result but, as noted above, those events fall outside the Court's temporal jurisdiction (see paragraph 56 above). As regards the events which took place after 26 April 2002, the Court notes that a number of investigative measures were conducted following the institution of a criminal case in March 2002 (see paragraphs 10-12 above). However, it appears that from April 2003 or – if the applicant's claim regarding the secret surveillance recordings is accepted (see paragraph 13 above) – at the latest from October 2003, the investigation became completely dormant. Instead of making any assessment of the evidence collected prior to that date or taking further steps to collect additional evidence, the investigation lapsed into an at least fifteen-month-long period of inactivity, followed by a decision to formally suspend it in January 2005 on the ground of the applicant's absence from Armenia which allegedly made it impossible to continue the investigation since, as reasoned by the investigator, there was a need to conduct further interviews and confrontations with the applicant taking part (see paragraph 16 above).

65. The Court, however, is not convinced by the grounds provided in the investigator's decision. It notes, firstly, that that decision, while referring to the need to conduct certain investigative measures with the applicant taking part, contained no specific details and was worded in rather abstract terms (see paragraph 16 above). No convincing or sufficient explanation was provided of the need to conduct further interviews with the applicant, who had previously been questioned on more than one occasion (see paragraphs 7 and 10 above). Nor was it sufficiently clear with whom specifically the allegedly indispensable confrontations were to be conducted or why those confrontations had not been conducted earlier while the applicant was still in Armenia. It is notable that the applicant was never summoned to participate in any such investigative measures either before or after his departure from Armenia. What is more, none of those interviews or confrontations with the applicant's participation were actually conducted after his return to Armenia and the resumption of the investigation (see paragraphs 35-41 above), which gives the impression that this ground was used merely as a pretext to suspend and thereby stall the investigation.

66. Moreover, even assuming that there was a real and genuine need to carry out investigative measures in the applicant's presence and it was genuinely impossible to do so in his absence, the Court is not convinced that that reason alone was sufficient to suspend the entirety of the investigation, including any possible measures not requiring the applicant's participation. It is notable that all the applicant's arguments regarding the absence of *force majeure* within the meaning of domestic law (see paragraph 45 above)

remained unanswered by the domestic courts, whose decisions similarly did not contain any reasoned justification of the need to suspend the investigation and were couched in very general terms (see paragraphs 26 and 27 above). The Court therefore concludes that the decision to suspend the investigation, which resulted in at least four years and three months of inactivity, namely from 21 January 2005 until 4 May 2009, was unjustified. It follows that in total the investigation was completely inactive for at least five and a half years for unexplained or unjustified reasons relating to omissions on the part of the authorities and not for reasons attributable to the applicant. Such an investigation cannot be considered prompt and expeditious.

67. The Court notes that the investigation was finally resumed upon the applicant's return to Armenia in May 2009 (see paragraph 35 above), following which some further investigative measures were taken, and charges were brought against three public officials in connection with the applicant's alleged ill-treatment. However, about one year after the investigation had been resumed the investigator discontinued the criminal proceedings because of the expiry of the limitation period (see paragraph 41 above). The Court notes in this connection that it has already held that the procedural obligations arising under Article 3 could hardly be considered to have been met where an investigation was terminated through statutory limitation of criminal liability resulting from the authorities' inactivity (see *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, § 60, 26 April 2022). Thus, the Court has invariably found a violation of the procedural guarantees of Article 3 in cases where the application of the statute of limitation was brought about by the failure of the authorities to act promptly and with due diligence (ibid., § 61, with further references).

68. The Court further notes that during the initial years of the investigation, including the period when it was suspended, the applicant was not recognised as a victim for the purpose of the criminal proceedings as required under domestic law (see paragraph 46 above) and was involved only as a witness, which deprived him of all the rights enjoyed by a victim in criminal proceedings, including the right to familiarise himself with certain material in the criminal case file and to lodge challenges and appeals. Thus, not being formally involved as a victim, the applicant was not informed about the decision of 21 January 2005 to suspend the investigation (see paragraph 16 above). Nor was he entitled to contest that decision before the courts (see paragraph 23 above). No convincing explanation was provided for the refusal to recognise the applicant as a victim at any stage of the proceedings (see paragraphs 26 and 27 above). Thus, the authorities failed to ensure the applicant's effective participation in the investigation.

69. Having reached the above conclusions, the Court considers it necessary to address the Government's preliminary objections (see paragraphs 52 and 53 above).

70. As regards the Government's claim that the applicant has failed to comply with the six-month time-limit, the Court notes that the parties disagreed as regards the point from which the investigation had lapsed into inaction (from 2002, according to the Government, and from October 2003, according to the applicant – see paragraphs 52 and 54 above). While there is no material in the case file supporting the applicant's claim that until October 2003 he had been familiarising himself with the secret surveillance recordings, it appears from the material available to the Court that investigative measures were conducted until April 2003 (see paragraph 12 above), after which the investigation lapsed into a period of inaction which lasted several years, including being formally suspended in January 2005. The Court notes, however, that in October 2003 the applicant left for the United States and that he was not aware of the decision to suspend the proceedings (see paragraph 16 above). He therefore had no reasons to believe that the investigation had stalled in his absence. It is true that after having left for the United States there was no contact between the investigating authorities and the applicant for about two and a half years, until he showed interest in the investigation in April 2006 by enquiring about its progress (see paragraph 18 above). However, during that period the authorities made public statements which could have given the impression that the investigation was actually progressing (see paragraph 15 above). Moreover, account should be taken also of the applicant's personal situation, namely the fact that, "owing to fears for his safety should he return to Armenia" (see paragraph 14 above), he was in the process of seeking political asylum in the United States, which was ultimately granted. The Court can therefore accept that the lack of contact during the above-mentioned period was justified.

71. The Court further notes that, having learnt about the decision to suspend the investigation, the applicant did not stay inactive but rather took steps aimed at reversing that decision which cannot be said to have been obviously futile. In particular, while it is true that the applicant had no right to contest the decision to suspend the investigation before the courts because of not being formally recognised as a victim (see paragraph 23 above), he did have the right to make a request to be recognised as a victim (see paragraph 46 above), which he did (see paragraph 25 above), and, had he been successful, he would then have had the right to contest that decision. The Government argued that the applicant should have applied to the Court at the latest within six months from the date of the decision dismissing that request, namely the decision of the Criminal Court of Appeal of 30 May 2007 (see paragraph 27 above), and that he should have known that all his subsequent complaints and hopes of reviving the investigation would be futile. The Court notes, however, that the reason provided by the authorities for suspending the investigation

was the applicant's absence from Armenia and that they had indicated repeatedly that they would resume the investigation once he returned (see paragraphs 22, 26 and 29 above). Thus, the applicant could still have reasonably expected that the investigation would resume and progress if and when he returned to Armenia. It is notable that the investigation was indeed resumed shortly after the applicant's return to Armenia (see paragraph 35 above) and that a number of further investigative measures were taken, including charges being brought against several alleged perpetrators of the ill-treatment. The applicant applied to the Court within six months from the date of the final decision taken at the close of the resumed investigation (see paragraph 44 above) and therefore can be considered to have complied with the six-month time-limit.

72. As regards the Government's claim that the applicant has failed to exhaust domestic remedies by not lodging an appeal on points of law against the decision of the Criminal Court of Appeal of 30 May 2007 (see paragraph 53 above), the Court reiterates that it is incumbent on the Government pleading non-exhaustion to satisfy it that the remedy referred to was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among other authorities, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 205, 22 December 2020).

73. The Court notes at the outset that the above-mentioned decision of the Criminal Court of Appeal, which the applicant did not contest, entered into force from the moment of its delivery (see paragraph 27 above). While the Court of Cassation – pursuant to the rules of criminal procedure in force at the material time – had the authority to review decisions of all the lower courts which had entered into force (see paragraph 47 above), it was not explicitly indicated in the decision itself that it was amenable to appeal (see paragraph 27 above). Furthermore, an appeal on points of law could be lodged within six months and was, moreover, accessible only to the accused, the victim and the civil plaintiff or defendant (see paragraph 47 above). Given those peculiarities of cassation proceedings at the material time, a question arises as to whether, in general, an appeal on points of law was an effective remedy to be used for exhaustion purposes or, if so, whether, in the applicant's particular case, it was an accessible remedy given his lack of any procedural status at that stage of the proceedings. The Government failed to provide any explanations in that respect. The Court therefore lacks sufficient grounds to accept the Government's non-exhaustion claim, especially taking into account the fact that the proceedings in question concerned the applicant's request to be recognised as a victim, a procedural step which the investigating authority was required to take – both under domestic law and under the procedural obligation of Article 3 – of its own motion without leaving it to the applicant's own initiative (see, *mutatis mutandis*, *Nachova*

and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 111, ECHR 2005-VII).

74. The Court therefore dismisses both of the Government's preliminary objections.

75. The foregoing considerations are sufficient to enable the Court to conclude that the authorities have failed to carry out an effective investigation into the applicant's allegations of ill-treatment. In such circumstances, it does not consider it necessary to also address the applicant's arguments regarding the alleged lack of adequacy and thoroughness of the specific investigative measures taken during the investigation.

76. There has accordingly been a violation of the procedural limb of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage. He further claimed 53,210 United States dollars (USD) in respect of pecuniary damage, which included medical costs incurred as a result of his alleged ill-treatment and the losses he had incurred as a result of his allegedly unlawful detention in 1999-2000.

79. The Government submitted that the applicant's claim for non-pecuniary damage was excessive. As regards his pecuniary claims, there was no causal link between the damage claimed and the violation alleged.

80. The Court does not discern any causal link between the violation of the procedural limb of Article 3 of the Convention found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

81. The applicant also claimed USD 64,787 for the costs and expenses incurred before the domestic courts and USD 3,730 for those incurred before the Court. These included legal costs, postal expenses, court fees and expenses relating to several trips which the applicant had allegedly had to make to Armenia for the purpose of participating in the investigation and a

number of other proceedings, and the wages allegedly lost as a result of those trips.

82. The Government submitted that part of the costs and expenses claimed, namely the sum of 2,611,721 Armenian drams, had already been awarded to the applicant at the domestic level, whereas his claims relating to accommodation and food expenses, as well as those related to the allegedly lost wages, were not supported by any documentary proof.

83. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, part of the costs and expenses claimed have not been supported by any documentary proof, while others do not appear to have been directly relevant for the applicant's case before the Court. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objections concerning the applicant's alleged failure to comply with the six-month rule and to exhaust domestic remedies and *dismisses* them;

2. *Declares* the application admissible;

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

4. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President